

In the Matter of:

WILLIAM ALLEN MEANS

VS

PETERSON, HARVEY and THE CITY OF SOUTH CHARLESTON

ROY TAYLOR, PH.D., ROUGH DRAFT

June 23, 2021



5010 Dempsey Drive
Cross Lanes WV 25313
304-415-1122

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

WILLIAM ALLEN MEANS,

Plaintiff,

-vs- Civil Action No. 2:20-561

E.M. PETERSON, D. HARVEY, and
THE CITY OF SOUTH CHARLESTON,

Defendants.

DEPOSITION OF ROY G. TAYLOR, PH.D.
(BY VIDEO CONFERENCE)

The deposition of Roy G. Taylor, Ph.D.,
was taken on June 23, 2021, at 10:00 a.m.,
at 219 Baker Drive, Winfield, West Virginia.

ELITE COURT REPORTING, LLC
5010 Dempsey Drive
Cross Lanes, West Virginia 25313
(304) 415-1122

Tara Arthur, CCR

A P P E A R A N C E S

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1 I N D E X

2 WITNESS

3 Roy G. Taylor, Ph.D.

4 EXAMINATION

5 by Mr. Ruggier

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6 by Mr. di Trapano

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7 by Mr. Ruggier

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8 EXHIBITS

9 None

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Reporter's Certificate:

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Errata Sheet/Signature Page:

Enclosed

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1 ROY G. TAYLOR, PH.D.,
2 called as a witness, first being duly sworn
3 by the Court Reporter/Notary Public,
4 testified as follows, to wit:

5 EXAMINATION

6 BY MR. RUGGIER:

7 Q. Mr. Taylor, as I said, I represent
8 Officers Peterson and Harvey in the lawsuit
9 filed by Mr. Means. I presume that your
10 deposition has been taken before?

11 A. I have. But what was your name? I
12 couldn't understand you. It is still kind
13 of tinny sounding.

14 MR. RUGGIER: Hold on a second.
15 Let me get my legal assistant in here.

16 (Pause in proceedings.)

17 BY MR. RUGGIER:

18 Q. So can you state your full name for
19 the record?

20 A. (No response.)

21 Q. Did you hear that, Roy?

22 A. No. Can you put a headset on?

23 Q. Well, I am not sure if I have one.
24 That was the problem.

1 A. Maybe just you can call me on my
2 cell phone and I can put the audio over
3 that.

4 Q. Sure. Okay. Give me your cell
5 phone number.

6 A. 919-697-1995.

7 (A discussion was held off the
8 record.)

9 BY MR. RUGGIER:

10 Q. Roy, can you state your full name
11 for the record?

12 A. Dr. Roy G. Taylor.

13 Q. All right. And, Roy, what is your
14 professional address?

15 A. 9650 Strickland, S-t-r-i-c-k-
16 l-a-n-d, Road, Raleigh, North Carolina,
17 27615.

18 Q. And what is your -- well, I don't
19 guess I need your phone number. Let's see.
20 Roy, what is your -- can you tell me your
21 educational background?

22 A. I have got a Ph.D. in criminal
23 justice from Walden University. I have a
24 master's degree in criminal justice from

1 Walden's University. I have a master's
2 degree from East Carolina University and a
3 bachelor's degree from Mount Olive
4 University in North Carolina. And an
5 associate's degree from Bladen Community
6 College in North Carolina.

7 Q. Let's see. Is Walden University,
8 is that an online university?

9 A. Primarily. There was four
10 residencies that were required. But the
11 majority of the course work is handled by
12 distant learning.

13 Q. Okay. And did you do your -- did
14 you do a dissertation?

15 A. I did. On crisis intervention team
16 training.

17 Q. Okay. And when did you graduate
18 from there?

19 A. November of 2020.

20 Q. Any other education?

21 A. Not formal education. I have over
22 5,000 hours of police training.

23 Q. Okay. Take me through your --
24 let's see. What year did you graduate --

1 when did you get your bachelor's degree from
2 my Mount Olive?

3 A. 1997.

4 Q. All right. And when did you get
5 your master's degree from East Carolina?

6 A. 2003.

7 Q. And when did you get your master's
8 degree from Walden?

9 A. February of 2020.

10 Q. You got a master's degree in
11 February of 2020. And you got a Ph.D. --
12 let's see. You got a master's degree from
13 Walden in February of 2020. When did you
14 get your Ph.D. from Walden?

15 A. November of 2020.

16 Q. Okay. And I presume you went to
17 high school?

18 A. I did.

19 Q. Where did you go and when did you
20 graduate?

21 A. Marion L. Steele High School in
22 Amherst, Ohio. And I graduated in 1980.

23 Q. 1980?

24 A. Yes, sir.

1 Q. Okay. So after high school, what
2 did you do?

3 A. I actually graduated -- I actually
4 met all the requirements for graduation in
5 1979. And I entered the Air Force. And I
6 was in the Air Force from '79 to '82 as a
7 law enforcement military working dog
8 specialist.

9 Q. And how were you discharged from
10 the Air Force?

11 A. Honorable.

12 Q. And what did you do after that?

13 A. I returned home to Ohio and
14 obtained three separate police department
15 part-time positions.

16 Q. In 1982?

17 A. Correct.

18 Q. Where were you working?

19 A. First was Twinsburg Township,
20 T-w-i-n-s-b-u-r-g, Township in Ohio.

21 Q. Okay.

22 A. And then Plymouth, Ohio. And then
23 Olmsted, O-l-m-s-t-e-d, Township in Ohio.

24 Q. Okay. And those are all three

1 part-time positions?

2 A. Yes. The economy was really bad
3 and the departments weren't hiring any
4 full-time officers. They were just putting
5 on part-time officers and working you
6 32 hours a week.

7 Q. Sure, I understand.

8 And then after that, what did you
9 do?

10 A. I was hired by the Sandusky Fire
11 Department in 1984 as a firefighter EMT. I
12 did that full-time and retained my police
13 job as well. And continued to apply for a
14 full-time police officer position.

15 Q. All right. So in '84, you were
16 with Sandusky. Did you retain any of your
17 other jobs also?

18 A. Yes, sir.

19 Q. And so what do you do next?

20 A. 1986, I was hired by the Cary,
21 C-a-r-y, North Carolina Police Department as
22 a full-time police officer.

23 Q. Okay. And what did you -- how long
24 were you there?

1 A. Four years. I was hired by the
2 Wake, W-a-k-e, Sheriff's Office with a K-9
3 handler and worked a lot with the drug task
4 force. And the sheriff offered me a full-
5 time job for me and my dog.

6 Q. Have you attended any kind of
7 police officer training? I know you said
8 you did many years. But at this point in
9 1986, had you gone to any state police
10 officer's academy?

11 A. In 1979, I completed the Air Force
12 Law Enforcement Academy. In 1983, I
13 completed the Ohio Peace Officer Training
14 Council's Police Academy. And in 1986, I
15 completed the North Carolina Criminal
16 Justice Training and Standards Basic Law
17 Enforcement Training.

18 Q. Okay. And then -- so in 1990, you
19 were at the Wake -- what's that, Wake County
20 Sheriff's Department?

21 A. Yes, sir.

22 Q. And how long were you there?

23 A. Four years.

24 Q. So what do you do next?

1 A. Chief of police for Bladenboro,
2 North Carolina.

3 Q. Spell Bladenboro.

4 A. B-l-a-d-e-n-b-o-r-o.

5 Q. Okay. And then what do you do
6 next?

7 A. Chief of police for Norwood,
8 N-o-r-w-o-o-d, North Carolina Police
9 Department.

10 Q. When did you start that position?

11 A. I believe that was 1996 or '97. I
12 don't have that.

13 Q. Did you leave the Bladenboro -- did
14 you -- just approximately, did you leave the
15 Bladenboro Department to become chief of
16 Norwood?

17 A. I did.

18 Q. All right. And next -- the next
19 time -- the next position?

20 A. I left Norwood and went to Liberty,
21 North Carolina as the police chief.

22 Q. Okay. And how long were you chief
23 there?

24 A. I only stayed there about three

1 months. I found it to be very tumultuous
2 politically.

3 Q. What year would that have been?

4 A. I believe it was 1998.

5 Q. 1998, okay. Let's see.

6 When you were with the Wake County
7 Sheriff's Department, you were a deputy?

8 A. Yes, sir.

9 Q. How high did you rise in rank?

10 A. I remained a road patrol deputy,
11 K-9 handler my entire time there.

12 Q. Okay. And then when you were chief
13 of Bladenboro, how big of a city is -- how
14 big was your -- let's see. Let's go with,
15 how big was your department?

16 A. It was five full-time officers.

17 Q. Including yourself?

18 A. Yes, sir.

19 Q. Would you agree that's a pretty
20 small police department?

21 A. Yes, sir. But the average size
22 police department in the United States is
23 ten officers.

24 Q. Okay. And then when you were chief

1 of Norwood, how many police officers were
2 within your department?

3 A. I believe it was nine full-time,
4 and then we had several part-time and
5 reserve officers.

6 Q. Okay. Would you agree that's also
7 a pretty small police department?

8 A. It is.

9 Q. Okay. And then when you were chief
10 at Liberty, how many people -- how many
11 officers were in your department?

12 A. That was 13 officers and several
13 part-time and reserve officers as well.

14 Q. Okay. Would you agree that's also
15 a pretty small police department?

16 A. That's the average size in the
17 United States.

18 Q. Okay. So after Liberty, what did
19 you do?

20 A. Governors Highway Safety Program
21 hired me to be the manager of external
22 affairs to manage all of the law enforcement
23 programs across the state.

24 Q. Okay. And when did you start that

1 position?

2 A. I believe it was end of '98 or '99.

3 Q. And how long were you in that

4 position?

5 A. For about one year. I was hired to
6 be the police chief of the state psychiatric
7 hospital.

8 Q. And when did you start with the
9 state psychiatric hospital?

10 A. I believe it was November of '99.

11 Q. Let's see. The Governor Highway
12 Safety Program, that was in North Carolina?

13 A. Yes, sir.

14 Q. And the hospital that you were
15 chief of police over was what? The North
16 Carolina State Psychiatric Hospital?

17 A. Name was Dorothea Dix Psychiatric
18 Hospital.

19 Q. What?

20 A. Dorothea Dix, Dix. Dorothea Dix
21 was famous for her work in psychiatric
22 healthcare and was a nurse in the civil war.

23 Q. Okay. And so after that in '99 --
24 when you were over the state psychiatric

1 hospital, how many officers were in your
2 department?

3 A. Five police officers.

4 Q. Okay. Wonder why it requires that
5 many police officers?

6 A. Say again.

7 Q. How come it required that many
8 police officers?

9 A. 24 hours, 7 days a week coverage.
10 So you had one officer per shift. And then
11 the chief to manage it and fill in if
12 necessary.

13 Q. Always got to have somebody there?

14 A. Yes.

15 Q. I got you.

16 All right. So after that in 1999,
17 what did you do?

18 A. Well, I was hired to be the East
19 U.S. Emergency Manager for Nortel Networks.
20 So I had from New York to Florida to the
21 Mississippi River. I think I had 13
22 different complexes that I was responsible
23 for the security, safety, hazardous
24 materials, emergency medical care of all of

1 the people on those facilities.

2 Q. When did that start?

3 A. I believe it was February of 2000.

4 Q. Okay. And how long did that last?

5 A. Sometime late 2005.

6 Q. Okay. Was this your first foray we
7 will call it into the private security
8 world?

9 A. Yes. It was more emergency
10 management than security. We had a contract
11 security company that I managed that had a
12 contract with us to provide entry control
13 and that type of thing.

14 Q. Right. And so after that, what did
15 you do?

16 A. There was a lot of things that went
17 on. There was a lot of things that were
18 going on simultaneously. I joined the
19 National Guard, North Carolina. Went
20 through officer candidate school. I became
21 commissioned as a second lieutenant. I had
22 to go through officer basic course which is
23 a full-time course.

24 Q. All right.

1 A. And then in 2002, I started Capitol
2 Special Police how to provide law
3 enforcement services throughout the state of
4 North Carolina. I did that in conjunction
5 with working full-time at Nortel.

6 Q. What is it called, Capitol Special
7 Police?

8 A. Yes, sir. It is C-a-p-i-t-o-l
9 Special Police.

10 Q. All right. And that started in
11 2002?

12 A. Correct.

13 Q. And that is still an ongoing
14 concern?

15 A. It is.

16 Q. And that is a private -- that's a
17 private company that you own?

18 A. I don't own it. I sold it in I
19 think 2017. But I'm still the manager of
20 it. I take care of all operations.

21 Q. How much did you sell it for?

22 A. I think it was like 2.8 million.

23 Q. Excellent.

24 And so were you the sole owner?

1 A. When I sold it, yes.

2 Q. All right. I got you.

3 All right. So you are still doing
4 -- you still are with Capitol Special Police
5 and you are, what, managing it, you say?

6 A. Correct. I am the chief of police.
7 So I'm sworn in through the Attorney
8 General's Office as a police chief.

9 Q. But that is -- you are chief of
10 police of a private company, right?

11 A. Right. Actually two. Blue Ridge
12 Public Safety is another private company.
13 It is on the western side of the state.

14 Q. All right. Blue Ridge Public
15 Safety. And when did you start -- did you
16 start that, or are you in that? Or is that
17 your company or what?

18 A. I bought it in 2014. It has been
19 in existence about 53 years now.

20 Q. Okay. So you've been there since
21 2014?

22 A. Correct.

23 Q. And what is your job at Blue Ridge
24 Public Safety?

1 A. Chief of police.

2 Q. All right. That's also a private
3 company?

4 A. Correct.

5 Q. How much did you buy it for?

6 A. I want to say it was like 1.2
7 million.

8 Q. Do you have any employees?

9 A. I have 109 employees altogether.

10 Q. Under Blue Ridge?

11 A. Under Capitol and Blue Ridge
12 combined.

13 Q. Okay. But you are not the owner of
14 Capitol anymore, right?

15 A. Yeah. And I sold Blue Ridge as
16 well.

17 Q. Oh, you sold Blue Ridge. Okay.
18 So when did you sell Blue Ridge?

19 A. It was a package deal. I sold
20 three security companies and two police
21 departments.

22 Q. Okay. So what were the three
23 security companies that you sold?

24 A. Signal 88 Security of Charlotte.

1 Capitol Special Police -- well, Capitol
2 Special Patrol is our security branch. And
3 Sapphire Valley Public Safety. Those are
4 the three security companies.

5 Q. And you sold all three of those
6 when?

7 A. In 2017, along with Blue Ridge
8 Public Safety and Capitol Special Police.
9 So I sold five companies altogether.

10 Q. Okay. And is that the one that you
11 sold -- you sold all five for 2.8 million,
12 is that the deal?

13 A. Yes, sir.

14 Q. All right. So are you in any
15 private law enforcement company now?

16 A. I am the chief of police of both of
17 those agencies. You have to be a sworn law
18 enforcement officer in order to be a chief
19 of police in North Carolina.

20 Q. Right. You are chief of police of
21 Blue Ridge Public Safety and Capitol Special
22 Police?

23 A. Correct.

24 Q. And those are both -- those are

1 both private companies?

2 A. Correct.

3 Q. And you have 109 employees under

4 you?

5 A. Correct.

6 Q. What does Blue Ridge Public Safety

7 do?

8 A. We have a contract with 40 property
9 owner associations which encompasses the
10 majority of the southern portion of Jackson
11 County, North Carolina. And then we provide
12 all law enforcement services for those
13 communities.

14 Q. Okay. You provide all law
15 enforcement for the communities?

16 A. Yes.

17 Q. For how many communities?

18 A. Forty.

19 Q. So in North Carolina, they -- are
20 these cities that they hire?

21 A. They are private communities.

22 Q. Private communities?

23 A. It's operating in an unincorporated
24 area of Jackson County. There is no

1 corporations in that area. No incorporated
2 cities.

3 Q. There is no -- so there is no
4 actual -- there is no incorporated cities in
5 Jackson, North Carolina?

6 A. In the southern part of Jackson
7 County, North Carolina.

8 Q. Okay. How come?

9 A. I don't know. It is just the way
10 it is.

11 Q. Okay. We don't have anything like
12 that in West Virginia. That's what I am
13 asking about. I don't know much about it.

14 A. Yeah. North Carolina general
15 statute 74E as in Edward is the about the
16 company police program which was started in
17 1871. So that's how long special police has
18 been in existence to handle situations like
19 this. Think about after the civil war,
20 North Carolina would have been a lot of
21 cotton mill towns. There wouldn't have been
22 any real law enforcement. So the law was
23 passed to allow companies to have their own
24 police departments or a company to be in the

1 business to provide law enforcement
2 services.

3 Q. Okay. All right. And so that's
4 what you are involved in now is Capitol
5 Special Police, Blue Ridge Public Safety and
6 I presume serving as an expert witness?

7 A. Right. And I am still a colonel in
8 the Army Reserve as military police corps.

9 Q. Okay. Anything else?

10 A. I am the Use-of-Force Director for
11 Compliant Technologies, which is a company
12 that makes conducted energy weapons.

13 Q. Okay. So that's also a private
14 company, you said?

15 A. Yes.

16 Q. Are you employed in any public
17 capacity whatsoever?

18 A. As a colonel in the United States
19 Army.

20 Q. As a lieutenant colonel in the
21 United States Army --

22 A. Correct.

23 Q. -- or as a colonel?

24 A. Huh? Could you --

1 Q. What is your public capacity that
2 you are employed in?

3 A. Lieutenant Colonel of the United
4 States Army Reserve. I'm the emergency
5 preparedness liaison officer for the State
6 of North Carolina. And so I work with the
7 governor and the emergency operations center
8 so if they need additional resources, they
9 would come to me to look at using active
10 duty military to resolve whatever issues
11 they are having.

12 Q. And so you are in the -- so you are
13 in the U.S. Army Reserve. Does that mean
14 you get called out periodically?

15 A. I just came off of 109 active duty
16 for the COVID vaccination mission.

17 Q. Okay. When was the last time that
18 you performed any street level police work?

19 A. I do occasionally in both Capitol
20 Special Police and Blue Ridge Public Safety.
21 I back up officers if they are having a
22 call, if we are short-handed and have
23 multiple calls at the same time, I will go
24 out and answer those calls.

1 Q. Okay. When is the last time that
2 you actually arrested somebody?

3 A. Eight to 10 years ago. It has been
4 a while. Again, as chief of police, I don't
5 have to, you know, go out on the street and
6 have usually -- if I was involved in a call
7 even today, I would, you know, turn it over
8 to one of the on-duty officers to do the
9 physical arrest.

10 Q. Where were you when you last
11 arrested somebody do you think?

12 A. The last one that I recall was at a
13 shopping center in Raleigh, North Carolina.

14 Q. With what department?

15 A. Capitol Special Police.

16 Q. Okay. And do you have the -- I
17 guess you have the ability to do that as a
18 member of the Capitol Special Police -- or
19 as chief of Capitol Special Police?

20 A. Yes, sir. As I said, I am sworn in
21 by the attorney general and have full
22 subject matter law enforcement authority and
23 the police were contracted. The only
24 difference between us and a municipal agency

1 is that we don't have receive tax dollars as
2 our primary source of income.

3 Q. Okay. And when is the last time
4 you were involved in a police pursuit?

5 A. I was actually in that same
6 situation where I arrested a guy. He was
7 wanted for driving while impaired, and he
8 fled. We chased him for about a mile before
9 he pulled over.

10 Q. You chased him in a vehicle?

11 A. Yes.

12 Q. What kind of vehicle was he in?

13 A. I don't recall. It was a passenger
14 car.

15 Q. Okay. When was the last time you
16 were involved in a pursuit of a motorcycle?

17 A. The last one that I remember was a
18 -- when I was a Wake County Deputy Sheriff.
19 But we didn't pursue motorcycles very long
20 because the power/weight ratio, they are
21 much faster than a patrol car. And usually
22 end up with disastrous results such as, you
23 know, the Means case we are discussing
24 today. So our policy was not to pursue them

1 very long. If they weren't going to yield
2 the right-of-way, it was just too dangerous
3 to continue.

4 Q. So it would have been how many
5 years ago that you were last involved in a
6 pursuit of a motorcycle if you were last
7 involved -- in a pursuit of a motorcycle
8 when you were with the Wake County -- when
9 you were a Wake County deputy?

10 A. Correct. It would have been
11 between 1990 and 1994.

12 Q. So that would be, what,
13 approximately maybe 43 years ago, 40 years
14 ago, something like that?

15 A. I will let you do the math. That
16 wouldn't be 40. It would probably be more
17 like 30 something. But I would have to get
18 the calculator out.

19 Q. Well, I know. It was 1980. And it
20 is not 2021. My math says it would be
21 41 years. Correct me if I am wrong.

22 MR. FORBES: I thought he said
23 1990.

24 A. 1994.

1 Q. 1990 to 1994. So maybe 30 years.

2 I don't want to put words in your mouth.

3 A. Twenty-seven years.

4 Q. Twenty-seven years.

5 A. But again, that just leads to, you
6 know, the use of good judgment and not
7 continuing to do it. Because if I see that
8 they are not going to yield once the lights
9 and siren come on, I am not going to
10 continue to pursue it. It is just too
11 dangerous.

12 Q. Yeah.

13 Have you ever -- have you published
14 any articles?

15 A. I have.

16 Q. What articles have you published?

17 A. They are listed on my CV. But
18 Ethically Correct I believe was the title of
19 one. There was another one about ethics.
20 And then one about shooting people was
21 Action Meets Reaction or Does It? I was
22 co-author of that. And then my
23 dissertation --

24 Q. That was your dissertation, right?

1 A. No. My dissertation was Crisis
2 Intervention Training Full Implementation.

3 Q. Okay. Do you have any other
4 articles that you've published?

5 A. No. Just those four.

6 Q. Okay.

7 A. I have got some life papers out,
8 you know, that I have done on police reform
9 and body worn cameras, homelessness. But
10 those are just life papers I have written on
11 my website.

12 Q. Okay. Have you ever -- I saw that
13 you've taught a lot of classes. Have you
14 ever taught a police pursuit class?

15 A. No. In North Carolina, driving
16 instructor is a specialty. So you have to
17 go through a separate instructor course in
18 order to teach that. And I have never gone
19 through that training.

20 Q. Okay. What does that mean? What
21 do you mean in North Carolina? What is the
22 special course that needs to be taken to
23 teach a -- I guess, what, an invasive
24 driving course?

1 A. It is a vehicle operations course.

2 But in North Carolina, in order to teach
3 certain specialties -- like I am a firearms
4 instructor. You cannot teach firearms
5 unless you are a certified firearms
6 instructor.

7 You also -- I was a certified first
8 responder instructor where I taught the
9 medical portion of the basic law enforcement
10 training. I was a hazardous material
11 instructor and taught about hazardous
12 materials and explosive devices. I was a
13 physical fitness instructor. So I taught
14 the physical fitness portions of BLET, Basic
15 Law Enforcement Training.

16 So North Carolina has certain
17 topics that you have to have additional
18 training in order to instruct on. And
19 driving is one of those. And I have never
20 attended that training.

21 Q. And I apologize, but can you say
22 the name of the training again?

23 A. That I have completed?

24 Q. No. The name of the training that

1 is required to teach a police pursuit
2 training.

3 A. Follander Vehicle Operations.

4 Q. Yeah. Do you know the name of the
5 course?

6 A. That is the name of the course. We
7 call it drivers instructor. But it would be
8 the course of vehicle -- emergency vehicle
9 operations.

10 Q. Okay. And you've never taken that
11 course?

12 A. No. I never taught that course.
13 But I have taken the course. And I have
14 taken speciality courses. But I am not an
15 instructor. If that's what you asked.

16 Q. Yeah. I apologize.
17 So you have taken the vehicle
18 operations course in North Carolina?

19 A. Right. It is a required portion of
20 basic law enforcement training. And I've
21 also been through the Pursuit and Precision
22 Driving Course taught by the North Carolina
23 Highway Patrol.

24 Q. Okay. You just have never taught

1 those courses?

2 A. Correct.

3 Q. Do you consider yourself an expert
4 in police pursuits?

5 A. I do.

6 Q. Okay. And do you consider yourself
7 an expert in police pursuits because you
8 have taken those classes and you served as a
9 police officer for a while?

10 A. I have been in law enforcement for
11 over 40 years. I have been a police chief
12 for 26. And during that time, I have, you
13 know, formulated policies and procedures to
14 regulate the use of pursuits in my agencies,
15 both federal, state, local and private, as
16 well as the military. I have also, you
17 know, had to supervise officers and
18 discontinue pursuits as I felt the situation
19 was requiring. I have also read, you know,
20 many articles on it. I stay up-to-date on,
21 you know, case law that involves vehicle
22 pursuits. So yes, through education,
23 training and past skills or past experience,
24 I would be an expert.

1 Q. How many police pursuits have you
2 been involved in over the course of your
3 career? Guesstimate?

4 A. Between 15 and 20 over 40 years.

5 Q. And of that 15 to 20 pursuits, how
6 many pursuits were of a motorcycle?

7 A. Only two that I recall. And I had
8 terminated both of those myself.

9 Q. Do you agree with me that a
10 motorcycle pursuit is different than
11 pursuing a vehicle?

12 A. It is. It is more dangerous to the
13 person on the motorcycle.

14 Q. Would you agree with me that
15 although it is more dangerous to the person
16 on the motorcycle, it would be less
17 dangerous to the public at large because the
18 motorcycle is smaller and lighter than a
19 vehicle?

20 A. No. I don't think that's a good
21 characterization. You are walking along the
22 highway, the motorcycle hits and kills you,
23 I don't think it matters whether it was a
24 two-ton truck or a motorcycle. If you are

1 dead, you are dead. And, you know, doing so
2 is just reckless.

3 Q. Do you agree with me that a pursuit
4 of a motorcycle is less dangerous to the
5 public at large for any reason?

6 A. No, I don't. It is just as
7 dangerous as any size vehicle.

8 Q. Okay. And why is that?

9 A. Because the chances for somebody to
10 be seriously injured or killed is just as
11 great. And a motorcycle has a, like I said,
12 quicker or power to weight ratio. So they
13 are able to accelerate a lot quicker than a
14 motor vehicle is. And that would make it
15 even more responsible to chase them because
16 a police officer isn't going to be able to
17 maintain constant contact with the vehicle.
18 So they are going to lose sight of them more
19 quickly.

20 And again, at first even though
21 they are lighter and faster, that doesn't
22 mean that their ability to decelerate and
23 break is any quicker. It still could take
24 the same distance or close to the same

1 distance that an automobile would take. So
2 if they become, you know, upon traffic or
3 pedestrians in a crosswalk, they are still
4 going to have to be able to slow down enough
5 to avoid colliding with them.

6 Q. Do you think that pursuing a
7 motorcycle is more dangerous than pursuing a
8 vehicle?

9 A. Yes.

10 Q. And how come?

11 A. Because the risk of injury or death
12 to the rider of the motorcycle is greater
13 than a passenger car because the passenger
14 car, especially today's more modern vehicles
15 have occupants restraint devices and
16 airbags. So if they do collide with
17 something, the likelihood of injury is less
18 than somebody colliding with something on a
19 motorcycle like we have in the Means case
20 where now we are dealing with somebody that
21 is a paraplegic because they were ejected
22 from a motorcycle and placed in a ditch.

23 Q. Do you agree with me that a
24 motorcycle is generally smaller than a car?

1 A. Yes.

2 Q. When were you first retained to
3 this matter?

4 A. Almost exactly a year ago. It was
5 in June of 2020.

6 Q. And who retained you?

7 A. Let me look and see. The letter
8 was just signed by a legal assistant, Katie
9 Tranthum. I am not sure which one of the
10 Calwell Luce di Trapano attorneys I spoke
11 with first.

12 Q. Sure.

13 And what is your hourly rate?

14 A. \$250. But I charge a flat fee for
15 these type of cases of \$5,000. So that way
16 I don't have to worry about, you know, the
17 clients not sending me everything. So I can
18 review it. You know, sometimes attorneys
19 are worried about the costs. But I've found
20 that a flat rate works better.

21 Q. Okay. A flat one-time rate of
22 \$5,000, does that encompass everything up to
23 trial -- or including trial?

24 A. The \$5,000 is the, you know,

1 report, reviewing all of the discovery. The
2 deposition is a \$1500 additional cost if we
3 are doing it like we are today where I don't
4 have to travel. And then trial would be
5 another \$2500 plus expenses for travel
6 costs.

7 Q. Okay. And how much have you been
8 paid in this case to date?

9 A. The \$5,000 retainer and the \$1500
10 deposition fee.

11 Q. Did we pay the \$1500?

12 A. I received a check the other day --
13 I believe it was from their company. So I
14 don't know. And I think it was for this
15 case. I have got a couple other cases I
16 have had in the past. But I received it
17 last week. So I am assuming it was for this
18 case.

19 Q. Okay. How many times have you been
20 retained by that law firm --

21 MR. DI TRAPANO: I suppose --
22 Duane, I mean, you are going to pay the
23 1500, right? I don't think that was for
24 this case.

1 THE WITNESS: Okay. Maybe not.
2 I will have to look. I just saw it was from
3 your firm.

4 MR. DI TRAPANO: I am not going
5 pay for your deposition.

6 MR. RUGGIER: Well, I appreciate
7 the offer. I appreciate that, Dante.

8 Q. So how many times have you been
9 retained by the plaintiff's law firm?

10 A. One other case that I recall.

11 Q. Okay. What case is that?

12 A. It was a young lady named Taylor
13 that was shot by the police. I don't recall
14 the caption offhand.

15 Q. Do you know -- you don't remember
16 -- you don't know where she was shot or what
17 -- where or what the case style was?

18 A. I mean, I can look real quick if
19 you would like. Hold on.

20 MR. FORBES: I am just going to
21 interject too that there is a case that I
22 took over that Henry Wood had retained Mr.
23 Taylor in. I didn't retain him, but I am
24 now counsel in that case that is pending in

1 front of Judge Johnstone.

2 MR. RUGGIER: What's that case?

3 MR. FORBES: It is the estate --
4 it is Cleo Murdoch versus Kanawha County
5 Sheriff.

6 MR. RUGGIER: Okay.

7 MR. DI TRAPANO: And, Duane,
8 just in full disclosure, he was retained by
9 David Simms in a case in Parkersburg that
10 David got me involved in. And the case is
11 styled I think Dent versus The City of
12 Parkersburg. And it is a -- I think it is a
13 chase case with a paraplegic.

14 Is that right, Roy?

15 THE WITNESS: Yes. What was the
16 name of the -- I'm sorry. What was Taylor's
17 last name? Or first name?

18 MR. FORBES: Quinn.

19 MR. DI TRAPANO: Taylor Quinn,
20 Q-u-i-n-n.

21 THE WITNESS: Like my last name
22 is Taylor. So I was thinking I had to
23 recall that it was hers.

24 MR. FORBES: And just to be

1 clear. Duane, even though Wood had retained
2 him in that Murdoch case, we intend to keep
3 him retained through the trial. I just want
4 to make it clear that no one else had
5 retained him. But I am now handling that
6 case. And he is the expert, gave a
7 deposition in it.

8 MR. RUGGIER: Sounds good.

9 THE WITNESS: Yeah. It was
10 Taylor Quinn versus the West Virginia State
11 Police, was the case that I was referring
12 to.

13 Q. My law firm has never retained you,
14 right? Pullin Fowler Flanagan Brown & Poe?

15 A. That doesn't sound familiar, no,
16 sir. But you are welcome to. I appreciate
17 all of the business.

18 Q. I got you.

19 Let's see. Do you work for a TV
20 station now?

21 A. I don't work for them. But they
22 call me as a consultant as an expert on
23 police cases.

24 Q. Do they pay you when they do that?

1 A. No. They just call to get my
2 opinion on things.

3 Q. Okay. What percentage of your
4 income is for expert witness work?

5 A. About 60 percent.

6 Q. Okay. And what was your -- how
7 much did you make in 2020 doing expert
8 witness work?

9 A. In 2020, it was almost 200,000.

10 Q. Okay. Do you know what you made in
11 2019?

12 A. Around 150,000.

13 Q. Okay. Was 2020 your best year as
14 far as --

15 A. Every year it gets better. Every
16 year it increases. So I am looking for
17 another great year in 2021.

18 Q. I got you.

19 Are you looking to make -- have you
20 made more than -- are you on track to make
21 more than 200,000?

22 A. Yes.

23 Q. Okay. What do you think you are
24 going to make this year?

1 A. I hope I hit 300,000. That's my
2 goal.

3 Q. Okay. What percentage do you do of
4 plaintiff as compared to defendant?

5 A. 60 percent plaintiff, 40 percent
6 defendant. I try to be as close to 50/50.
7 But again, I can't control who retains me.

8 Q. Have you ever -- have you ever been
9 retained as a -- to provide an opinion for a
10 defendant in the State of West Virginia?

11 A. Not that I recall.

12 Q. Have you ever been admitted as an
13 expert in the State of West Virginia?

14 A. I don't believe that I have been
15 called to testify on any cases in West
16 Virginia yet.

17 Q. Are the only times you have been
18 retained in West Virginia those four times
19 that we talked about earlier by plaintiff's
20 law firm?

21 A. I would have to go back through my
22 trial history to look. But I have had quite
23 a few cases. I would say probably eight to
24 ten cases in West Virginia.

1 Q. Okay. Over the years you have been
2 retained as an expert witness, eight to ten
3 times in West Virginia?

4 A. Correct.

5 Q. Do you know what law firm? I
6 understand that three or four times have
7 been with Calwell firm and others. But do
8 you know any of the other law firms that
9 have retained you?

10 A. Not offhand, no, sir.

11 Q. Okay. Are you associated with any
12 expert group?

13 A. TASA group, T-A-S-A, out of
14 Pennsylvania. They send business my way.
15 Then SEAK, S-E-A-K, they have, you know,
16 again clients that retain me. And there is
17 Experts by Expert. I have had -- you know,
18 these are all places that, you know, have
19 different experts and find business for
20 their --

21 Q. For this case, were you retained
22 out of TASA?

23 A. I don't believe so. I believe it
24 was just through my past performance with

1 their group.

2 Q. With who -- oh, with Calwell?

3 A. Yes.

4 Q. Calwell Law Firm.

5 And you work with Dante, is that --
6 in a lot of cases?

7 A. He is one of -- he is one of the
8 attorneys. But I've worked with several
9 others. Mr. Simms as well.

10 Q. Okay. All right. Let's see. So
11 switching gears a little bit. Just some
12 general questions about law enforcement.
13 What is your opinion of the broken window
14 theory of policing?

15 A. I love it. I use it all of the
16 time in my community policing programs.

17 Q. How so?

18 A. Teach people that if they, you
19 know, keep up with a property -- you know,
20 we work with a lot of landlords and, you
21 know, property owner groups to make sure
22 that their property is maintained so that if
23 the grass is cut and everything is kept
24 orderly, the likelihood of people to litter

1 and cause other disruption is less likely.
2 It is shown psychologically. So we try to
3 encourage them to keep everything up to code
4 based on the city ordinances or county
5 ordinances.

6 But anytime that it appears things
7 are taken care of orderly, there is less
8 likely for disorderly or criminal conduct to
9 occur. So we make sure all of the lights
10 are working and junk cars are towed off,
11 that there is no, you know, cars left on the
12 street or people with washing machines in
13 their front yard. All of those type of
14 things help. But it's all part of community
15 engagement.

16 Q. What is your understanding of the
17 broken window theory of policing?

18 A. That's what I just was talking
19 about. If the areas appear to be cared for,
20 the likelihood of disruption and further,
21 you know, even minor criminal activity is
22 less likely.

23 Q. Would that be kind of your
24 definition of it?

1 A. Yeah. Off the top of my head,
2 after having not read it for several years.
3 But I have used it. I have won national and
4 state awards in community policing. So
5 community policing is my philosophy of law
6 enforcement.

7 Q. Okay. Is that the normal
8 definition of community policing?

9 A. Well, community policing is, you
10 know, a program that engages in a community
11 to be a partner with law enforcement to
12 report crimes and to tear down barriers
13 between law enforcement and the community.
14 Again, to gain their trust and their
15 cooperation and the administration of
16 justice.

17 Q. Okay. What is meant by the idea of
18 a closed system versus an open system?

19 A. I don't know. I am not sure
20 exactly what you are talking about. I mean,
21 in my master's degree with safety, we have,
22 you know, open and closed systems as well
23 for safety programs. So I think that's kind
24 of an obscure question if you can define it

1 a little bit.

2 Q. Yeah. Sure.

3 So as far as maybe a closed system
4 of justice as opposed to an open system, is
5 there an open system of policing versus a
6 closed system of policing?

7 A. Not even heard that terminology.

8 Q. Okay. What is your definition of a
9 specific deterrent as opposed to a general
10 deterrent?

11 A. Specific deterrents would be based
12 on statistical analysis of criminal activity
13 and directing police resources to target
14 that specific issue to remediate it.

15 Q. Okay. Let's see. Can you define
16 what is meant by the term nanny state?

17 A. My definition of nanny state would
18 be someone that has overregulation and
19 governance over the population.

20 Q. Does that have anything to do with
21 police work?

22 A. It possibly could if they had a
23 community that had low crime and they
24 focused on traffic enforcement because there

1 was nothing else to do, that could be a
2 nanny state when they are overregulating,
3 you know, traffic enforcement instead of --
4 the real reason for it is to reduce injuries
5 and deaths on the highways. But I have
6 seen, you know, agencies that use it for
7 monetary gain. And, you know, that's not
8 what the purpose of law enforcement is.

9 Q. How do you use it for monetary
10 gain?

11 A. Because portions of the fines for
12 the traffic violations go into the
13 department's budget.

14 Q. So they are encouraged to write up
15 more fines so that the department has more
16 money, is that what you are saying?

17 A. Correct. If you remember the Brown
18 case from St. Louis, that the police chief
19 and the mayor have both been caught in
20 conversations talking about adding officers
21 to increase the town's budget. And, you
22 know, that's what they, you know, allege was
23 the reason that they were stopping, you
24 know, Mr. Brown that led to his death.

1 Q. Writing too many tickets so that
2 there is more money in the city's coffers?

3 A. Correct.

4 Q. Okay. Have you ever presented a
5 seminar to West Virginia officers?

6 A. No.

7 Q. Have you ever taught a class to
8 West Virginia officers?

9 A. No. There may have been somebody
10 from West Virginia at a national conference.
11 But not specifically.

12 Q. Okay. Have you ever attended a
13 class or seminar in West Virginia?

14 A. No. I had a wife that lived in
15 Beckley and used to visit. But that's about
16 as close to West Virginia as I came, was
17 coming to visit family.

18 Q. I got you. Well, Beckley is in
19 West Virginia, so ... We are talking about
20 Beckley, West Virginia, right?

21 A. What about it?

22 Q. You are talking about Beckley, West
23 Virginia?

24 A. Right. She actually lived in Oak

1 Hill was where their family was. But it is
2 close to Beckley.

3 Q. Okay. Yeah.

4 Have you driven the pursuit route
5 in this case?

6 A. No, sir. I have watched the video
7 that was produced by the defendants.

8 Q. All right. Have you viewed the
9 railroad crossing where the accident
10 happened?

11 A. I have photographs and the video.

12 Q. Have you ever been out to the
13 accident scene?

14 A. No, sir.

15 Q. Have you viewed the railroad
16 crossing where this happened in person?

17 A. No, sir.

18 Q. Have you viewed the ditch where the
19 plaintiff landed in this case?

20 A. Only the photographs and
21 videotape.

22 Q. All right. You have never seen it
23 in person?

24 A. No, sir.

1 Q. Have you ever had a motorcycle
2 license?

3 A. I do. Still have one.

4 Q. Do you drive motorcycles?

5 A. I sold my Harley a couple of years
6 ago. I wasn't able to have the time to ride
7 it as much as I wanted to.

8 Q. I got you.

9 How long did you drive motorcycles?

10 A. Since I was 18 years old. So
11 41 years.

12 Q. And did you ever drive a motorcycle
13 across railroad tracks?

14 A. Many times.

15 Q. And I presume you have watched the
16 video taken by the two girls after the
17 accident scene?

18 A. Yes, sir. Yes, sir, I did.

19 Q. All right. Did you take into
20 account any witness's credibility when
21 forming your opinions in this case?

22 A. No, sir. I look at everybody as
23 telling the truth. And if there is a
24 disputed fact, I would list it separately.

1 But it is not up to me to determine
2 truthfulness.

3 Q. Okay. Did you take into account
4 Plaintiff's criminal history in forming your
5 opinion?

6 A. No.

7 Q. Did you take into account that the
8 plaintiff did not have a motorcycle license
9 on forming your opinion?

10 A. No. I am looking at police
11 procedure and the violation of that, not the
12 -- not Plaintiff's actions.

13 Q. Did you take into account that the
14 plaintiff did not have insurance when
15 forming your opinions?

16 A. No.

17 Q. Did you take into account that
18 plaintiff had ecstasy in his system when
19 forming your opinion?

20 A. No.

21 Q. Did you take into account that
22 Plaintiff had amphetamines in his system
23 when forming your opinion?

24 A. No.

1 Q. Did you take into account that
2 Plaintiff had THC in his system when forming
3 your opinion?

4 A. No.

5 Q. Did you take into account that
6 Plaintiff had benzodiazepines in his system
7 when forming your opinion?

8 A. No.

9 Q. Did you take into account that
10 Plaintiff is an admitted drug addict when
11 forming your opinion?

12 A. No.

13 Q. Did you take into account that
14 Plaintiff overdosed on March 11, 2021, when
15 forming your opinion?

16 A. No.

17 Q. How does a -- as a police officer,
18 have you dealt with people on meth?

19 A. I have.

20 Q. On amphetamines?

21 A. I have.

22 Q. What's that?

23 A. Yes.

24 Q. How does that affect them?

1 A. Become agitated and hyperactive.

2 Q. Overly agitated?

3 A. I'm sorry, what?

4 Q. Like overly agitated or easily
5 agitated?

6 A. Yes. And I have also seen them
7 have hallucinations as well.

8 Q. Yeah.

9 Plaintiff testified that he was
10 probably a better motorcycle driver on
11 methamphetamines. Would you agree with that
12 statement?

13 A. No.

14 Q. Let's see. Do you agree that
15 Plaintiff was attempting to flea from the
16 police in this case?

17 A. Yes.

18 Q. In assessing this pursuit, did you
19 take into account that it was on an early
20 Saturday morning?

21 A. I did.

22 Q. Did you take into account that
23 there is less traffic on early Saturday as
24 opposed to other days when forming your

1 opinion?

2 A. I would disagree with that. But I
3 am not specifically familiar with that area
4 other than there were homes, churches,
5 schools and playgrounds along the route.
6 And on a Saturday morning, they would very
7 well likely be occupied. People do a lot of
8 errands on Saturday mornings. So I would
9 say that the likelihood of more traffic on a
10 Saturday morning than on, you know, Saturday
11 night and early morning hours.

12 So again, this was a time where the
13 officers going twice the speed limit should
14 have been cognizant of the possibility of a
15 pedestrian or across traffic. And with the
16 corporal failing to use his siren
17 continuously, he also endangered the public
18 by not giving them adequate warning that
19 somebody twice the speed limit is coming.

20 Q. So is it your belief that there is
21 more traffic on Saturday morning than at
22 other times normally?

23 A. It is possible, yes, sir. It has
24 to be taken into consideration.

1 Q. It is possible?

2 A. Right.

3 Q. So do you disagree with the
4 statement there is less traffic on early
5 Saturday morning at 8:00 a.m. than at other
6 times?

7 A. The other times may have more
8 traffic than Saturday morning. But there
9 certainly is likely to be traffic on a
10 Saturday morning. And you can't disregard
11 that.

12 Q. Do you agree with me that it is a
13 low traffic time on Saturday mornings at
14 8:00 a.m. generally speaking?

15 A. No.

16 Q. Okay. Do you think that it is a
17 heavy traffic time on Saturday mornings at
18 8:00 a.m.?

19 A. I don't believe it would be as
20 heavy as it would be if it is a week day and
21 more people would be going to work. But
22 again, Saturday morning traffic, there's
23 still a considerable amount of traffic.

24 Q. Uh-huh. Did you take into account

1 that the pursuit was mostly on back roads?

2 A. I did. I took into account. It
3 was a 19-mile pursuit which was ridiculous
4 and that it was exceeding speed limits and
5 causing danger to other motorists and
6 pedestrians while along the roadway as well
7 as to the officers and to the plaintiff.

8 Q. How long was it the pursuit?

9 A. It was over 14 minutes.

10 Q. Over 14 minutes. And how many
11 miles?

12 A. Nineteen.

13 Q. Do you agree with me that it was
14 not Officer Peterson's fault that the
15 plaintiff painted his gas tank black?

16 A. Yeah. Correct. I mean, I don't
17 see that that's illegal. He could have
18 painted it pink. It doesn't matter.

19 Q. Do you agree that it is not
20 Peterson's fault that the plaintiff's
21 motorcycle did not match the license plate?

22 A. It is not his fault. But when he
23 first took notice of it and decided that he
24 saw a motorcycle painted black sitting at an

1 intersection, he couldn't read the license
2 plate. He would have no idea that it was
3 even expired. So he started pursuing
4 somebody because they chose to paint their
5 motorcycle black.

6 And when you are looking at a low
7 income economically depressed area like this
8 area, this gentleman not having a lot of
9 money, you know, they piece together and do
10 the best they can to have something nice.
11 So I don't see that that's an indication of
12 any criminal intent or a reason that a
13 police officer should start following
14 somebody.

15 Q. Do you disagree with the statement
16 that a motorcycle being painted black on his
17 gas tank might indicate that the motorcycle
18 was stolen?

19 A. No.

20 Q. Do you agree with me that it is
21 common for stolen motorcycles to have their
22 gas tank painted black?

23 A. Do I disagree, is that what you
24 said?

1 Q. I think I said do you agree. Do
2 you agree that it is common that a stolen
3 motorcycle would have a gas tank painted
4 black?

5 A. I don't agree with that, no. There
6 is no evidence to show that that's a common
7 trait. I have not seen any statistical
8 studies in 40 years that say that's a common
9 trait of a motorcycle that has been stolen.
10 And to this date, no piece of that
11 motorcycle has ever been found to be stolen.

12 Q. Do you think it was reasonable for
13 Officer Peterson to believe that the
14 motorcycle may have been stolen because the
15 gas tank was painted black?

16 A. No.

17 Q. Do you think it was reasonable for
18 Officer Peterson to believe that the
19 motorcycle might have been stolen if the gas
20 tank was painted black and the license did
21 not match the motorcycle?

22 A. It is a potential. It is possible.
23 But it is also what it turned out to be. It
24 was a registration violation. And that was

1 the only crime that was committed.

2 Q. So you agree with me that it was
3 possible. And if you agree that it was
4 possible, do you think that it was
5 reasonable for Officer Peterson to have
6 reasonable suspicion that the motorcycle was
7 stolen?

8 A. No. All he knew and all they could
9 prove was that the registration was expired
10 and -- you know, again, I am not familiar
11 enough with every model of Yamaha and Honda
12 to know the difference between what I recall
13 -- I think it was like a YT250 and Honda
14 CVR. So, again, unless you are a motorcycle
15 enthusiast and know the different models and
16 makes with a tape painted black, probably no
17 logos, how would he know that it is not the
18 motorcycle that it was registered to. I
19 have not seen any testimony that he is
20 familiar with different makes and models of
21 motorcycles and the specific models of each
22 one of those brands.

23 Q. So if Officer Peterson was told by
24 dispatch that the motorcycle registration

1 did not match the license plate, would it be
2 reasonable for him to have reasonable
3 suspicion that the motorcycle was stolen?

4 A. Well, your question was convoluted.
5 The license and the registration are the
6 same thing. So I don't think -- I know what
7 you mean. You mean that the make -- the
8 motorcycle came back different than the
9 registration, is that what you meant?

10 Q. Yeah. Yeah. That's a better way
11 of putting it.

12 A. Well, again, there is no testimony
13 that he knew the difference between Yamaha
14 and Honda. All he knows is that the license
15 plate came back on a motorcycle, that it was
16 expired.

17 Q. Do you think he did know the
18 difference --

19 A. He has not testified that he knew
20 the difference.

21 Say again.

22 Q. If he did know the difference,
23 would you then agree that it was reasonable
24 for him to have reasonable suspicion that

1 the bike may have been stolen?

2 A. No. All he knows is there is a
3 registration violation which, you know, was
4 a very common occurrence. And people trade
5 motorcycles fairly regularly. Again, not
6 having a right registration on a vehicle
7 does not necessarily dictate that it is a
8 stolen vehicle. And in North Carolina, you
9 have 30 days to change tags on a vehicle and
10 notify DMV. So he doesn't have any way to
11 know that this motorcycle wasn't
12 legitimately purchased within 30 days and
13 that he put an expired tag from another
14 motorcycle on it. That's the only thing he
15 knows is that this is an expired motorcycle
16 registration plate.

17 Q. Right. But does it give him the
18 right as a police officer to follow that
19 motorcycle and to see what happens?

20 A. He has a right to stop it for a
21 registration violation which would give him
22 the opportunity to do a closer inspection
23 and run a VIN number and ask questions about
24 when did you purchase this motorcycle, where

1 did you get it from, you know. But again,
2 the only thing that he can do is stop him
3 for a registration violation. And when the
4 vehicle didn't stop and engage in a pursuit,
5 again, based on policy and national police
6 practices, again, for such a minor
7 violation, it is not worth the risk of
8 injury to the public or to the operator of
9 the motorcycle or the law enforcement
10 officers to continue in a reckless manner
11 which he did.

12 Q. Would you agree with me that if he
13 had a reasonable suspicion that the
14 motorcycle was stolen, that he could then
15 engage in a -- he could then engage in
16 following the motorcycle?

17 A. Following, but not pursuing.

18 Q. If he had a reasonable suspicion
19 that the motorcycle was stolen, could he
20 pull over that motorcycle?

21 A. No. He doesn't have probable cause
22 for that. The only thing he was able to
23 stop that motorcycle for was a registration
24 violation. That's it.

1 Q. Well, if there is a registration
2 violation, would you agree -- do you agree
3 there was a registration violation?

4 A. I do.

5 Q. If there is a registration
6 violation, then he can pull that motorcycle
7 over, correct?

8 A. Yes.

9 Q. And if there is a -- if that
10 officer -- I'm sorry. If that motorcycle
11 refuses to be pulled over, can he then
12 engage in a pursuit?

13 A. He can. But again, it has to be
14 reasonable. And when it becomes too
15 dangerous to continue, he needs to use good
16 judgment and discontinue. Or his
17 supervisor, the lieutenant, should have
18 stepped in once this pursuit continued for
19 ten minutes. I mean, in that four minutes
20 the supervisor told him to discontinue if it
21 became reckless or the speeds got too high,
22 and they failed to do that. And they
23 testified -- both officers testified that
24 the pursuit did get dangerous and was a

1 hazard to others. And that was one of the
2 criminal charges that they took out against
3 him. So they were in defiance of their
4 policy, and they were in defiance of a
5 direct order of a supervisor.

6 Q. If there was a registration
7 violation and if the officer had a
8 reasonable belief that the motorcycle was
9 stolen, do you agree that he can engage in a
10 pursuit of that motorcycle if the motorcycle
11 refuses to pull over?

12 A. Correct. I mean, I have said
13 previous testimony was he has the lawful
14 authority to do so. But again, he also has
15 an obligation to follow policy and direct
16 orders to disengage if it appears it is too
17 dangerous. Again, the reason for the
18 pursuit has to be outweighed by the danger
19 to society. And in this case, it wasn't.
20 And now we have somebody that is a
21 paraplegic because these officers acted
22 outside of the scope of a reasonable officer
23 and a wreck with serious bodily injury
24 resulted. And it should have never happened

1 because, again, this all rolled back to a
2 registration violation.

3 Q. Do you believe that it is the fault
4 of Officer Peterson that the plaintiff
5 refused to be pulled over?

6 A. It was a decision of the plaintiff
7 not to yield the right of way to an
8 emergency vehicle. But again, it was
9 Corporal Peterson and Officer Harvey's
10 decisions -- conscious decisions to continue
11 a pursuit that was endangering themselves
12 and the public and the plaintiff. That was
13 their decision. If they would have turned
14 off their lights and the siren that was used
15 intermittently and fallen back, turned
16 around, then there is less likelihood that
17 the plaintiff would be in a wheelchair
18 today.

19 Q. Let's see. Do you agree that it is
20 not Officer Peterson's fault that the
21 plaintiff did not have a license?

22 A. No.

23 Q. Do you agree that it is not Officer
24 Peterson's fault that the plaintiff had

1 ecstasy in his system?

2 A. No.

3 Q. Do you agree that it is not Officer
4 Peterson's fault that the plaintiff had
5 methamphetamines in his system?

6 A. No.

7 Q. All right. Let's see. Let's see.
8 Going through a little bit on your report.
9 The plaintiff under your facts which are
10 assumed to be true of your report, you can
11 pull that up if you would like or look at
12 it. Appendix D.

13 A. Right. Let me pull it up real
14 quick. I just printed out the report. I
15 didn't do the appendix. Let me just pull it
16 up real quick.

17 Q. Take your time. No problem.

18 A. Okay, sir. Go ahead.

19 Q. Let's see. You accepted as true
20 that the plaintiff was on his way back to
21 visit a friend to give him a clutch cable?

22 A. That's what he testified to or
23 based statement of, yes, sir.

24 Q. You don't know -- do you know which

1 friend?

2 A. I don't recall offhand, no, sir.

3 Q. Do you know where that friend

4 lived?

5 A. I don't recall. I believe he, you

6 know, made mention of it. But again, I

7 didn't need to go into that level of detail.

8 I was just giving a reason he was out on the

9 road that morning.

10 Q. Do you know the route to that

11 friend's house?

12 A. No, I don't.

13 Q. Do you contend that the plaintiff

14 was driving to his friend's house the

15 entirety of the pursuit?

16 A. No.

17 Q. At what point do you assert that

18 the plaintiff was no longer trying to break

19 his friend's clutch cables?

20 A. Again, I don't know of the route to

21 the friend's house. So I don't know if he

22 made that first left turnoff of 119, if that

23 was to go to his friend's or if he was

24 trying to see if the police were going to

1 follow him. I don't know what was in his
2 mind.

3 Q. Okay. Do you know why the
4 plaintiff did not drive -- just drive to his
5 friend's house?

6 A. No. I don't know.

7 Q. Okay. As a police officer, is it
8 your testimony that it would not raise your
9 suspicion that the gas tank was painted over
10 black?

11 A. No. That is not an uncommon
12 occurrence.

13 Q. In your history as a police
14 officer, if someone drove by you and their
15 motorcycle had been painted black -- I'm
16 sorry -- their gas tank had been painted
17 black, that would not indicate to you at all
18 that that motorcycle might be stolen?

19 A. No. I mean, I would go out on the
20 road today and find all different colors of,
21 you know, can spray paint jobs. And that's
22 not indicative of a stolen motorcycle, just
23 somebody that can't afford a custom paint
24 job.

1 Q. Or is it somebody that is trying to
2 cover up the motorcycle?

3 A. Again, that's all, you know,
4 circumsppection.

5 Q. Let's see. Do you agree that
6 Officer Peterson was an experienced officer?

7 A. I do.

8 Q. Do you agree that Officer Peterson
9 was an experienced officer in police
10 pursuits?

11 A. No. There is no evidence that he
12 has received any training outside of the
13 basic academy. So he would be trained to a
14 very minimal level.

15 Q. Does the fact that Officer Peterson
16 had just picked up Chic-Fil-A for himself
17 and a garage employee indicate anything to
18 you?

19 A. That he decided he was going to try
20 to stop the motorcycle to see if it was
21 stolen or not because he again noticed it
22 because of the paint job and decided to pull
23 it over. And he was able to do that because
24 the vehicle had an expired registration

1 plate.

2 Q. Do you agree that it was reasonable
3 for Officer Peterson to think that the bike
4 may have been stolen because the bike did
5 not match the license plate?

6 A. It would be another factor that
7 could be used in weighing that decision.

8 Q. Okay. How should Officer Peterson
9 have interpreted the plaintiff looking over
10 his shoulder multiple times as Officer
11 Peterson got in behind him?

12 A. The plaintiff testified that, you
13 know, the lights weren't on. There was no
14 siren. So I think he was just checking to
15 see if the officer turned on his lights
16 because he felt that it was unusual that the
17 officer was following him so closely and for
18 such a long period of time. So, you know, I
19 don't know if the motorcycle had mirrors on
20 it. But, you know, having driven different
21 brands of motorcycles, sometimes the mirrors
22 are not very stable and they are difficult
23 to see anything. So looking over your
24 shoulder to see if the police have activated

1 their lights, I think is a prudent motorist
2 looking to make sure that if the police do
3 activate their lights that he would, you
4 know, respond immediately.

5 Q. So is it your testimony that the
6 plaintiff was being prudent by constantly
7 looking over his shoulder when Officer
8 Peterson was behind him?

9 A. Yes. We don't know -- again,
10 that's their characterization. So how many
11 times that is, how frequent it is, how
12 flagrant it is, you know, again, we just --
13 it is left up to our imagination based on
14 what they wrote.

15 Q. Do you agree that continually
16 looking over the shoulder would be
17 suspicious behavior to a police officer --
18 the plaintiff continually looking over his
19 shoulder would be suspicious behavior to a
20 police officer?

21 A. It could be. But again, there is
22 also reasonable explanations that he wanted
23 to make sure -- to see what the police
24 officer is doing.

1 Q. Okay.

2 A. It is not illegal activity.

3 Q. When you were a police officer,
4 would that indicate some type of potential
5 suspicious behavior if that individual kept
6 looking over his shoulder when they were
7 driving a motorcycle?

8 A. It is possible. It could be a
9 warning sign.

10 Q. Do you agree that it was proper for
11 Officer Peterson to initiate a stop of the
12 plaintiff's motorcycle?

13 A. It was for a registration
14 violation.

15 Q. And instead of stopping, the
16 plaintiff sped up and tried to get away from
17 the officer, right?

18 A. Yes.

19 Q. And you agree that it was
20 reasonable for Officer Peterson to believe
21 that the plaintiff was trying to flea him at
22 that point?

23 A. Yes.

24 Q. And do you agree that the plaintiff

1 was committing a crime when he initially
2 tried to flea the officer?

3 A. It's a motor vehicle violation of
4 failure to stop for an emergency vehicle.

5 Q. Is that a crime?

6 A. Either an infraction or a
7 misdemeanor, yes.

8 Q. So the answer is yes, it is a
9 crime, correct?

10 A. Again, I am not familiar with West
11 Virginia statutes. It could be an
12 infraction or misdemeanor. Most of the time
13 an infraction is considered a crime.

14 Q. I am going to ask you some
15 questions about the police route. Are you
16 familiar with the police route -- I'm sorry
17 -- the police pursuit route?

18 A. The route?

19 Q. Yeah.

20 A. Only with what was in the report
21 and the audio -- or the videotape that they
22 produced later.

23 Q. Okay. Let's see. Do you agree
24 that the plaintiff could have stopped his

1 motorcycle and pulled over when he turned
2 off of Route 19 onto Ruth Road?

3 A. Yes.

4 Q. Do you agree that Plaintiff should
5 have stopped his bike and pulled over when
6 he turned off of Route 119 onto Ruth Road?

7 A. As long as the officer was
8 signalling to do so, yes.

9 Q. Do you agree that Plaintiff
10 probably would not have ended up paralyzed
11 had he simply pulled over when he turned off
12 of Route 119 onto Ruth Road?

13 MR. DI TRAPANO: I'm going to
14 object.

15 A. That's the first turn. Well, it's
16 119 on to Southridge Boulevard is where they
17 caught up. And then --

18 Q. Yeah. I think he turned off
19 onto --

20 A. Onto Ruth Road, yes. Yeah. If it
21 was safe to do so. But again, you know, a
22 disputed fact is that the plaintiff said
23 that he never saw the lights or heard the
24 siren until much later in a pursuit. So,

1 again, I qualify that answer with if the
2 officer was displaying his emergency lights
3 and audible warning signal by siren.

4 Q. Do you agree that it was reasonable
5 for Officer Peterson to think that Plaintiff
6 was committing a crime when Plaintiff was
7 refusing to stop?

8 A. Yes.

9 Q. Do you believe that when Plaintiff
10 was turning off of Route 119 to Ruth Road,
11 he was going to a friend's house?

12 A. Again, I don't know where his
13 friend lives. I have never mapped it out.
14 I don't know that he gave us a specific
15 address.

16 Q. Do you agree that Plaintiff could
17 have stopped his bike or his motorcycle and
18 pulled over when Officer Peterson turned on
19 his lights and sirens?

20 A. What was the beginning of that?
21 I'm sorry. I missed it.

22 Q. Do you agree that plaintiff could
23 have -- or do you agree that Plaintiff
24 should have stopped his motorcycle and

1 pulled over when Officer Peterson turned on
2 his lights and siren?

3 A. Yes.

4 Q. Do you know how long the plaintiff
5 was on Ruth Road?

6 A. Once he entered Ruth Road, he went
7 to the intersection of Trace Fork Road where
8 he turned onto Trace Fork Road. But I don't
9 know the distance from 119 to that road. So
10 whatever that distance is.

11 Q. All right. Do you agree that the
12 plaintiff could have stopped his motorcycle
13 and pulled over when he was on Ruth Road?

14 A. I would assume so, yes.

15 Q. Do you agree that Plaintiff
16 probably would not have ended up paralyzed
17 had he simply pulled over and stopped his
18 motorcycle when he was on Ruth Road?

19 A. Yes.

20 Q. Do you agree that it was reasonable
21 for Officer Peterson to think that Plaintiff
22 was committing a crime when Plaintiff was
23 refusing to stop his motorcycle on Ruth
24 Road?

1 A. The crime he was committing was
2 registration violation and failure to yield
3 to lights and siren. So that would be the
4 only crimes. Again, minor misdemeanors.

5 Q. What, fleeing a police officer is a
6 minor misdemeanor?

7 A. Again, different states have
8 different laws. So, again, it depends on --

9 Q. Do you know what (inaudible) --

10 A. Not off the top of my head, no.
11 But it would have been failure to stop. In
12 North Carolina, if we have a speed to
13 allude, that turns into a felony. But then
14 we also have failure to stop for blue light
15 and siren, which is a misdemeanor. So,
16 again, based on speed and duration and
17 recklessness, there may be a different
18 statute or felony to different statute for
19 misdemeanor. So at that point I am not sure
20 which violation he may have been committing.
21 But either way, I know there is a felony for
22 alluding the police in West Virginia. I
23 just don't know what all of the requirements
24 or the elements of that crime are.

1 Q. Do you know what -- you don't know
2 whether it is a felony to attempt to evade
3 the police in West Virginia?

4 A. No. I'm sorry. You will have to
5 repeat that.

6 Q. Do you know if it's a felony to
7 attempt to evade the police in West
8 Virginia?

9 A. Yes. At some point it is, yes.
10 But again, that's committed, you know,
11 during the pursuit. It is not the reason
12 for the pursuit. And that's not a good
13 reason to justify a pursuit's continuance.
14 If that's the only felony that exists, if it
15 is not a armed robber or a rapist or a
16 murder, then, you know, a continued vehicle
17 pursuit endangering people is again not
18 warranted because it doesn't overcome that
19 fact that it is more dangerous to commit the
20 pursuit than it is for the crime that has
21 been committed. So by them chasing him,
22 that's what continues to a felony.

23 Q. Are you asserting that it is
24 Officer Peterson's fault that the plaintiff

1 was committing a felony?

2 A. Not his fault that that's the
3 choice he made. But by continuing the
4 pursuit, he continued the felony and
5 continued the dangerousness to everyone
6 involved and the motor in public and
7 pedestrians and dogs walking along the side
8 of the road.

9 Q. Do you agree with me that the
10 continuing of the pursuit was the fault of
11 the plaintiff and not Officer Peterson?

12 A. No. It is the plaintiff that made
13 that decision. But with the continuous
14 police pursuit is what caused it to
15 continue. If the police would have
16 terminated the pursuit, as would be per
17 their regulation and national standards,
18 then the plaintiff most likely would not
19 have wrecked.

20 Q. So is it your testimony that the
21 fault of the police pursuit is the actions
22 of the police officers?

23 A. Yes. That's why it is common
24 practice in the United States and according

1 to their policy, again, if the dangerousness
2 of the pursuit outweighs the type of crime
3 and that person remaining at large in the
4 community, it has to be terminated. And
5 that's the problem that we face here. And
6 that's why this action has been brought
7 because the police should have terminated
8 this within the first few miles. Once they
9 realized that he was not going to yield the
10 right-of-way, that the dangerousness to the
11 community and to themselves and to the
12 plaintiff outweighed them overtaking and
13 catching him. So it is their fault.

14 That's why these regulations are
15 put into place. That's why they are
16 supposed to obey the regulations and the
17 direction of their supervisor. And they did
18 not heed either of those. So it puts the
19 ball back in their court for fault.

20 MR. DI TRAPANO: Hey, Duane, I
21 am going to object to the use of the felony
22 terminology. I mean, there was never a
23 conviction on that. He was charged, but the
24 charge was dismissed. So, you know, any

1 reference to that -- I was going to let you
2 go through your questions and answers. But
3 I object to using it as a felony.

4 MR. RUGGIER: Fair enough.

5 Q. So the pursuit went from Ruth Road
6 onto Trace Fork Road. Are you aware of
7 that?

8 A. Yeah. Paragraph 10 of my report,
9 that's what it says.

10 Q. Do you agree that the plaintiff
11 could have stopped his motorcycle and pulled
12 over when he turned onto Trace Fork Road?

13 A. He could have, yes.

14 Q. Do you agree that the plaintiff
15 could have stopped his motorcycle and pulled
16 over when the pursuit was going as slow as
17 15 miles an hour?

18 A. Right. Or as fast as 53 miles an
19 hour in a 25-mile-an-hour zone.

20 Q. Do you agree that Plaintiff should
21 have stopped his motorcycle and pulled over
22 when he was on Trace Fork Road?

23 A. Yes.

24 Q. Do you agree that Plaintiff

1 probably would not have ended up paralyzed
2 had he simply pulled his motorcycle over and
3 stopped his motorcycle when he was on Trace
4 Fork Road?

5 A. Yes.

6 Q. Do you agree that it was reasonable
7 for Officer Peterson to believe that the
8 plaintiff was committing a crime when he was
9 refusing to stop on Trace Fork Road?

10 A. Yes. And he should have also
11 acknowledged this Lieutenant Paskel's
12 command to let it go if the speeds or
13 recklessness continues. And he failed to do
14 that. And that was on most likely Trace
15 Fork Road. It was at that same period of
16 time, four minutes into the pursuit.

17 Q. Do you have a specific time when
18 you believed that this pursuit should have
19 been terminated?

20 A. Yes.

21 Q. When?

22 A. It should have been terminated
23 shortly after the lieutenant told him to
24 because he was going 53 miles an hour in a

1 25-mile-an-hour speed zone. So that's twice
2 the speed limit. And the lieutenant ordered
3 him if the speeds get excessive, well,
4 that's excessive.

5 As a police expert of 40 years and
6 chief of police, if a commanding officer
7 gives you that direction, then you need to
8 heed it and you need to discontinue the
9 pursuit. And they failed to do that. And
10 they failed to keep the lieutenant
11 adequately informed of speeds and locations
12 where he could have stepped in and
13 terminated them. And I feel like the
14 lieutenant should have terminated it once it
15 continued just a few more minutes to allow a
16 pursuit to go on 14 minutes is ludicrous.

17 Q. So just so I am clear. You believe
18 that the pursuit should have been terminated
19 at the point when the plaintiff was driving
20 53 miles an hour in the -- in a 25-mile-an-
21 hour zone, is that what you are saying?

22 A. One of the factors was excessive
23 speed. And yes, once they reached twice the
24 legal speed limit, that should have been

1 notice to them that this is too reckless and
2 we need to discontinue it. And especially
3 when you got Corporal Peterson saying he
4 wasn't running his siren because he couldn't
5 hear and he wanted to make sure people could
6 hear him on the radio. So, again, he is not
7 giving audible warning to people who may be
8 pulling out of their driveway and that this
9 high speed chase is coming by.

10 You know, who is going to expect a
11 vehicle to be traveling twice the speed
12 limit down their treat? Nobody. And the
13 police have an obligation by using this
14 audible device to warn them that, hey,
15 something is happened. Maybe I need to get
16 out of the road or pull over. But they
17 failed to do that.

18 Q. Is it your belief that Officer
19 Peterson was not using his audible signal
20 the entirety of the pursuit?

21 A. He testified to that fact.

22 Q. It is your understanding that
23 Officer Peterson testified that he was not
24 using his audible signal the entirety of the

1 pursuit?

2 A. He did. He had it on at the end.

3 But at like 14 minutes, you hear the siren
4 in the background. But in his deposition,
5 he testified that he was not using the siren
6 the entire time because he wanted to make
7 sure his radio transmissions were clear and
8 that he had hearing loss from a shotgun
9 blast some years before. So that hurt his
10 ears or for whatever reason he decided not
11 to use it which typically is a violation of
12 state law. Anytime you are engaged in
13 emergency response, you have your audible
14 and visual signals activated the entire
15 time.

16 Q. Would your opinion in this case
17 change if Officer Peterson had used his
18 audible signal during the pursuit?

19 A. No. Because of the duration and
20 the dangerousness of the pursuit. But I am
21 just saying that he made it even more
22 dangerous by failing to use his audible
23 warning device continuously.

24 Q. Do you agree that when Plaintiff

1 was on Trace Fork Road, that he was not
2 going to a friend's house?

3 A. Again, I don't know where his
4 friend lived, but -- I don't know where the
5 route would have deviated.

6 Q. Do you know how long Plaintiff was
7 on Trace Fork Road?

8 A. Went from Trace Fork Road to
9 Heavenly Drive. But I don't know what the
10 distance is. But that's where he turned on
11 to Heavenly Drive, which is another
12 25-mile-an-hour speed zone. And that's
13 where he crossed over to the opposite lane
14 of travel at both high and low speeds and
15 putting his foot down on the ground. He was
16 making a turn. And that's after he was told
17 to discontinue the pursuit by the lieutenant
18 if it got dangerous or reckless or his speed
19 picked up.

20 Q. Do you agree that Plaintiff was
21 committing a crime when he was trying to
22 flee the police officers on Heavenly Drive?

23 A. Yes. He had motor --

24 Q. Do you know how long -- do you know

1 how long Plaintiff was on Heavenly Drive?

2 A. He turned onto a dirt and gravel
3 access road with multiple ruts. But I don't
4 know the distance. It didn't say.

5 Q. Okay. Do you agree that Plaintiff
6 could have stopped his motorcycle and pulled
7 over when he was on Heavenly Drive?

8 A. Yes.

9 Q. Do you agree that Plaintiff
10 probably would not have ended up paralyzed
11 had he simply stopped his motorcycle and
12 pulled over when he was on Heavenly Drive?

13 A. Yes.

14 Q. Do you agree that it was reasonable
15 for Officer Peterson to think that Plaintiff
16 was committing a crime when he was -- when
17 Plaintiff was refusing to stop on Heavenly
18 Drive?

19 A. Yes.

20 Q. Let's see. You don't really know
21 where he was going when he was on Heavenly
22 Drive, right?

23 A. No. Only that he turned onto a
24 dirt gravel access road that I guess didn't

1 have a name.

2 Q. Yeah. It doesn't really seem like
3 -- do you agree that he probably at this
4 point was not attempting to go to his
5 friend's house or go to a friend's house?

6 A. Again, I don't know where he lives.
7 And this is a road. It is a pot holey road.
8 But just like Corporal Peterson failed to
9 obey his supervisor and department policy.

10 Q. Do you agree that Plaintiff could
11 have stopped his motorcycle and pulled over
12 on Heavenly Drive?

13 A. Yes.

14 Q. Do you agree -- or do you agree
15 that Plaintiff should have stopped his
16 motorcycle and pulled over when he was on
17 Heavenly Drive?

18 A. Yes.

19 Q. Are you aware that this pursuit
20 went through a creek bed?

21 A. Yes.

22 Q. And do you agree that the plaintiff
23 could have stopped his motorcycle and I
24 guess pulled over when he was in the creek

1 bed?

2 A. I probably would have done that
3 before or after because there was water
4 flowing. But yes, he could have.

5 Q. Do you agree that Plaintiff would
6 not have ended up paralyzed had he simply
7 stopped his motorcycle when he was in the
8 creek bed?

9 A. Yes.

10 Q. And you agree that it was
11 reasonable for Officer Peterson to think
12 that Plaintiff was committing a crime when
13 he was -- when Plaintiff was refusing to
14 stop in the creek bed?

15 A. Yes.

16 Q. Are you aware of the Plaintiff
17 testimony that the reason he could not stop
18 his motorcycle was because Officer Peterson
19 was following too closely?

20 A. Yes.

21 Q. Does that sound to you like a false
22 statement if this pursuit went over the
23 course of 19 miles?

24 A. No.

1 Q. Why not? Do you believe that the
2 motorcycle was so close to the Peterson's
3 SUV over the course of 19 miles that the
4 plaintiff on the motorcycle was unable to
5 stop?

6 A. That was his testimony, that he was
7 afraid that the SUV would strike him if he
8 did stop. And again, as an expert, I am not
9 allowed to assign credibility to either
10 party. So -- but just like at the end of
11 this pursuit, the plaintiff claims that
12 Corporal Peterson struck his motorcycle.
13 And that's what caused the crash. You know,
14 and then Corporal Peterson says that he was
15 about one car length behind the motorcycle
16 when it crashed. So again, that's a
17 disputed fact.

18 You know, I am not saying the
19 plaintiff is telling the truth. I am not
20 saying that the defendant is telling the
21 truth. I am only offering what information
22 that I was providing and provided.

23 So it is not unreasonable. I have
24 seen police officers act in a reckless

1 manner in the past where they would be right
2 on somebody's bumper or somebody's rear
3 tire. I remember a police crash in Rapid
4 City, South Dakota where they actually did
5 make contact with a motorcycle's back wheel,
6 that the guy robbed a bank and they were in
7 a pursuit and they, you know, touched the
8 back wheel with a bumper of the car and it
9 caused the motorcycle to wreck and killed
10 the driver of the motorcycle. So it is not
11 unlikely that police officers do these
12 things.

13 Q. So it is your testimony that it is
14 reasonable to believe that over the course
15 of 19 miles of this pursuit that Officer
16 Peterson was so close to the plaintiff's
17 motorcycle that he was unable to stop?

18 A. Not at all locations. There were
19 times where he was able to pull ahead
20 because, again, the weight to horsepower
21 ratio. But again, majority of the time,
22 according to the plaintiff, he was afraid of
23 the close proximity of Corporal Peterson
24 that it would wreck him.

1 Q. Right.

2 So you agree with me that there are
3 places that the plaintiff could have stopped
4 his motorcycle and pulled over without being
5 struck from behind by Peterson's SUV?

6 A. It is a disputed fact. Because we
7 don't know how far away he got. All we can
8 say is that Corporal Peterson reported that
9 in a certain straightaway that he was able
10 to get some distance. But again, I don't
11 have that corroboration from the plaintiff.
12 So again, it is just a fact that I report as
13 parts of the information that I was given.

14 Q. Let's see. The pursuit goes on to
15 Rabel Road. Do you know how long the
16 plaintiff was driving on Rabel Road?

17 A. It said that motorcycle continued
18 up a hillside and then turned left onto
19 Rabel Road. And continued to follow
20 motorcycle on Road road till he got to the
21 intersection of Roland Road -- or Brounland
22 Road, B-R-O-U-N-L-A-N-D Road. And that's
23 where Patrolman Harvey was waiting.

24 Q. Do you agree that the plaintiff

1 could have stopped his bike and pulled over
2 when he was on Rabel Road?

3 A. I would believe so, yes.

4 Q. Do you agree that Plaintiff
5 probably would not have ended up paralyzed
6 had he simply stopped his bike and pulled
7 over when he was on Rabel Road?

8 A. Yes.

9 Q. Do you agree that it was reasonable
10 for Officer Peterson to think that the
11 plaintiff was committing a crime when
12 Plaintiff was refusing to stop his
13 motorcycle on Rabel Road?

14 A. Yes. I also believe that Corporal
15 Peterson should have stopped the pursuit
16 prior to that point.

17 Q. Do you agree that when Plaintiff
18 was on Rabel Road, he was not going to his
19 friend's house?

20 A. No. Again, I don't know where his
21 friend lived.

22 Q. Do you agree that when Plaintiff
23 was in the creek bed, he probably wasn't
24 going to his friend's house?

1 A. No. Again, it could be a shortcut.

2 I don't know. I mean, I don't know what his
3 intents were.

4 Q. Let's see. Do you agree that
5 Plaintiff should have stopped his bike and
6 pulled over when he was on Rabel Road?

7 A. Yes.

8 Q. All right. The pursuit then went
9 on to Brounland Road. Do you agree that
10 Plaintiff could have stopped his motorcycle
11 and pulled over when he was on Brounland
12 Road?

13 A. Yes.

14 Q. Do you agree that Plaintiff
15 probably would not have ended up paralyzed
16 had he simply stopped his bike and pulled
17 over when he was on Brounland Road?

18 A. Yes.

19 Q. Do you agree that it was reasonable
20 for Officer Peterson to think that Plaintiff
21 was committing a crime when Plaintiff was
22 refusing to stop on Brounland Road?

23 A. Yes.

24 Q. Pursuit goes on to Emmons Road. Do

1 you agree that Plaintiff could have stopped
2 his bike -- his motorcycle and pulled over
3 when he was on Emmons Road?

4 A. We didn't talk about the going in
5 front of the sand plant where they had to
6 drive on a narrow down one-lane road and
7 motorcycle failed to stop at the alternating
8 signal for oncoming traffic. And then it
9 continued down Brounland Road to Emmons
10 Road, E-M-M-O-N-S. And it turned off of the
11 road onto Emmons Road. But yeah, I guess
12 he, you know, could have pulled over at any
13 one of those parts other than the one-lane
14 road.

15 Q. Yeah. I mean, would you agree that
16 there are numerous places where he could
17 have pulled over and stopped his motorcycle
18 along this pursuit route?

19 A. I would think that would be
20 reasonable, yes.

21 Q. Do you agree that the police
22 pursuit was driving slowly as it passed the
23 two women who later on filmed the arrest
24 scene?

1 A. No one gave me any characterization
2 of the speeds at that point. So I don't
3 know. At one point that's I think where the
4 officers had testified and told the state
5 trooper that they were going over 60 miles
6 an hour.

7 Q. Have you read the testimony of -
8 let's see - Nunley or Chandler, the two
9 women?

10 A. Yes.

11 Q. And I believe that one of them
12 testified that the pursuit was going slowly
13 as it passed them?

14 A. I don't recall that. But again --

15 Q. You don't recollect?

16 A. I don't recall it.

17 MR. DI TRAPANO: Object. That's
18 a mischaracterization of the testimony. It
19 depends on where they passed them. You
20 know, if you are talking about going up the
21 railroad tracks, that was the testimony.

22 But anyway, that's my objection to
23 the form.

24 Go ahead.

1 A. My characterization or my statement
2 would be that, you know, speed slowly, fast
3 was all relevant to people's experience and
4 driving abilities. So I don't know -- maybe
5 50 miles an hour. 25 would seem slow when
6 they went by. 50 maybe. You know, there is
7 just a number of factors. I don't know. I
8 don't know what their experience is in
9 driving and how they would characterize
10 that.

11 Q. I think they characterized it as
12 slowly.

13 A. But again, I don't know what their
14 opinion about fast and slow is. It is all
15 subjective. Each person is going to be a
16 little different.

17 Q. I got you. I understand.
18 So do you agree that Plaintiff
19 would not have ended up paralyzed had he
20 simply stopped his motorcycle and pulled
21 over when he was on Emmons Road?

22 A. Yes.

23 Q. And do you agree it was reasonable
24 for Officer Peterson to think that Plaintiff

1 was still committing a crime when he was
2 refusing to stop on Emmons Road?

3 A. Yes.

4 Q. And do you agree that Plaintiff was
5 not going to a friend's house when he was on
6 Emmons Road?

7 A. Again, I don't know. I can't
8 answer that question.

9 Q. Do you agree that Plaintiff should
10 have stopped his motorcycle and pulled over
11 when he was on Emmons Road?

12 A. Yes.

13 Q. Do you have any evidence that the
14 plaintiff would have slowed down and not
15 wrecked had this pursuit been terminated?

16 A. There is no evidence other than
17 just the fact that that's why these policies
18 are put into place to discontinue pursuits
19 because of the likelihood of them continuing
20 in a reckless speed and rate is less if they
21 are no longer being pursued. Once they see
22 that the law enforcement officers have
23 discontinued the pursuit, then the
24 likelihood is they are going to slow down

1 and drive safely and continue their escape.
2 But if they see the police officers are
3 continuously behind them, pursuing, they are
4 going to continue their fleeing until they
5 get away or decide to give up.

6 Q. Do you have any evidence to support
7 that?

8 A. No. Only that that's the purpose
9 of the policy being in place. Discontinue
10 pursuits once it becomes too dangerous,
11 weighing the fact of what the reason of the
12 pursuit is for against society, that that's
13 why we discontinue because common sense and
14 normal human interaction would be that they
15 are going to reduce speed and drive in a
16 normal manner once the police give up the
17 pursuit.

18 Q. Well, do you agree with me that
19 once the police officer gives up the
20 pursuit, that the individual is still going
21 to flee the pursuit most likely for a period
22 of time?

23 A. I don't know. I mean, that's why
24 we train them, once you discontinue the suit

1 -- pursuit, to turn off your lights and
2 siren and make a U-turn and go the opposite
3 way so that you are no longer behind the
4 vehicle. And that's to enable them to see
5 obviously that you are no longer pursuing
6 them and that the likelihood is they are
7 going to reduce speed and drive in a more
8 safe manner.

9 Q. But what do you base that on?
10 Just common sense?

11 A. No. That's the purpose these
12 policies were crafted. I have read a number
13 of white papers over the years, and I
14 understand the rationale behind discontinuing
15 pursuits.

16 Q. Well, do you agree with me that
17 that individual is still going to continue
18 to flee for a period of time after the
19 pursuit is discontinued?

20 A. There is no evidence to support
21 that.

22 Q. So you think that -- is it your
23 testimony that the individual being pursued
24 is most likely to immediately stop when the

1 pursuit ends?

2 A. Nothing said about stopping. But
3 they are going to reduce speed and drive in
4 a more safe manner.

5 Q. Well, do you have any -- do you
6 have any evidence or information in regard
7 to the time period between when a pursuit is
8 stopped and when the individual being
9 pursued stops fleeing?

10 A. No. I have never found any studies
11 that quantify that.

12 Q. Okay. Then if there is not any
13 studies on it, how do you know when the
14 individual being pursued is going to stop?

15 A. Again, it is just the premise of
16 the policy is to enable the person to know
17 that they are not being pursued anymore by
18 law enforcement, and that would cause them
19 to drive in a more sane manner. And then if
20 they continue on and crash, then again the
21 police department is already -- or the law
22 enforcement agency is already
23 discontinued -- obviously discontinued.

24 Q. Well, you keep referring to the

1 policy. And I am not talking about the
2 police policy, I am talking about what's in
3 the mind of the individual being pursued and
4 how far that individual is going to continue
5 on once the policy -- I'm sorry -- once the
6 pursuit is ceased?

7 A. It is going to differ with every
8 single person.

9 Q. Okay. And is it fair to say then
10 you don't necessarily know how long the
11 individual is going to continue to flee once
12 the police pursuit is stopped?

13 A. Correct. We don't have any way to
14 determine that. But again, human nature and
15 the likelihood is that once they realize
16 they are no longer being pursued, that they
17 will slow down and drive in a more sane
18 manner or safer manner. But at least the
19 police department is not continuously
20 pursuing them, causing them to either crash
21 as they did in this instance or get away or
22 finally decide for themselves that it is not
23 worth the pursuit and they pull over. So I
24 mean there is those three options. And in

1 this situation, they pursued them until he
2 crashed and seriously injured himself.

3 Q. Is it a fair characterization of
4 your testimony that you don't know how long
5 the plaintiff would have continued to flee
6 if the police officer stopped their pursuit?

7 A. Correct.

8 Q. Do you have any -- we've kind of
9 talked about this. Do you have any
10 knowledge as to where Means was going, the
11 plaintiff was going, or intending to go?

12 A. Only what he initially said, that
13 that was where his trip was going that day
14 was to his friend's house to pick up a
15 clutch cable.

16 Q. Right. But, I mean, when he is on
17 Emmons Road, he is not going to his friend's
18 house, right?

19 A. Again, I don't know.

20 Q. Getting to the accident scene and
21 the tracks. Do you have any idea where
22 Means was intending on going on the tracks?
23 Was he going to attempt to flee the officers
24 by going down the side of the tracks, or was

1 he going to continue to go through the --
2 through the crossing there and continue on
3 up the hill a little bit? Or do you know?

4 A. I don't know. But based on reading
5 the plaintiff's statements and reading the
6 defendants' statements, my opinion is that
7 he was continuing down the road and was not
8 going to go off road, that the officer said
9 that he, you know, going into that turn just
10 miscalculated and struck the railroad track
11 instead of staying on the paved portion of
12 the road. And then you have Mr. Means that
13 said that when he was on the railroad track,
14 the police officer struck him with a
15 vehicle. So either of those could have
16 caused the crash. But I didn't see anything
17 that led me to believe that he was
18 attempting to leave the paved portion of the
19 roadway and drive along the railroad track.

20 MR. DI TRAPANO: Duane, it is
21 almost 12:00. We have been going for two
22 hours. You know, when you get to the next
23 sort of topic or subject matter, maybe we
24 could take a short break if that's okay.

1 MR. RUGGIER: If you guys want
2 to take a break, we can take a break right
3 now if you want. I mean, I am not going to
4 go -- I mean, I would think I am not going
5 to have -- probably go less than an hour.
6 But why don't we take a break, and we will
7 reconvene her in just a little while.

8 MR. DI TRAPANO: Why don't we
9 take a break and come back in like ten
10 minutes, and then you said you've got maybe
11 about another hour left?

12 MR. RUGGIER: Yeah. If that. I
13 don't even think I got that. So we can --
14 let's reconvene in 15 minutes because I am a
15 little bit slower than most people.

16 (Break in proceedings.)

17 BY MR. RUGGIER:

18 Q. Roy, since you agree that there are
19 numerous places along the route that -- I'm
20 sorry. We can start over again.

21 A. That's okay.

22 Q. Can you hear me?

23 A. Yes, sir.

24 Q. Okay. Roy, since you agree that

1 there are numerous places along the route of
2 the police pursuit that the plaintiff should
3 have and could have pulled over, do you also
4 agree with me that the plaintiff bears some
5 -- at least some responsibility for this
6 police pursuit?

7 MR. DI TRAPANO: I'm going to
8 object to the form of the question as it's
9 asked and answered. He can't give a
10 responsibility in this case.

11 Q. But you can answer.

12 A. Yes. He could have pulled over a
13 number of places and should have obeyed the
14 law and pulled over when an emergency
15 vehicle approached him. And just like the
16 officer should have obeyed their department
17 policy and orders of their supervisor to
18 discontinue, they had many opportunities to
19 do that. And they failed to do so.

20 Q. So it is your opinion that both the
21 police officer and the plaintiff bears some
22 responsibility for this occurrence?

23 MR. FORBES: Objection.

24 A. Yes.

1 Q. Do you agree with Trooper Robinson
2 of the West Virginia State Police that the
3 cause of this accident was the plaintiff
4 hitting the tracks?

5 MR. DI TRAPANO: Object to the
6 form.

7 A. No. Because the trooper never
8 interviewed Mr. Means. He only interviewed
9 the two officers. So he did not have a full
10 accounting of what happened, and he didn't
11 conduct any tests or other examination. He
12 simply went off of the statements he
13 obtained from the two officers who were
14 involved.

15 Q. What do you believe was the cause
16 of Mr. Means' accident?

17 A. Corporal Peterson striking the
18 vehicle with his patrol car.

19 Q. And what do you base that on?

20 A. Mr. Means' statement and the fact
21 that Mr. Means had crossed over at least one
22 other set of railroad tracks that were
23 similar in nature. And he was able to go
24 across those successfully. So why would

1 this set be any different?

2 Q. Do you agree with me that it is
3 possible that because this is a different
4 set of railroad tracks, that it might have
5 been a different set of railroad tracks?

6 A. Obviously, it was a different set.
7 But it was -- put in with the Department of
8 Transportation's approval. So they should
9 have been similar in nature.

10 Q. Have you looked at any of the
11 photos of the railroad tracks?

12 A. I have.

13 Q. Do any of the photos -- I am
14 talking about the railroad tracks where the
15 -- where the arrest occurred or the accident
16 happened, whatever you want to say.

17 Do the railroad -- is there any
18 indication to you that there were any marks
19 on those railroad tracks which might
20 indicate that a motorcycle had struck them?

21 A. There were some marks. But whether
22 or not it was caused by Mr. Means'
23 motorcycle, I can't determine.

24 Q. Have you spoken to anybody in

1 regard to the cause of the accident at the
2 railroad tracks?

3 A. No. I relied on all of the
4 information that was provided to me by the
5 plaintiff's attorneys.

6 Q. And what information was all of
7 that? Is that what is in your -- in your
8 opinion, what you gave me here?

9 A. It is Appendix C -- yes, Appendix C
10 to the report has all of the material that I
11 relied upon to make my opinion.

12 Q. Okay. Let's see. I presume you
13 have -- like I said before, you looked at
14 the video of this -- I guess the accident
15 aftermath?

16 A. Yes, sir.

17 Q. Does that video show you anything
18 of interest to the case?

19 A. Yes. It shows an excessive use of
20 force and improper moving of somebody that
21 may have cervical spinal injuries.

22 Q. Okay. So is that all?

23 A. That's quite a bit.

24 Q. Yeah. But is that all?

1 A. Yes.

2 Q. Okay. That video shows you that
3 Harvey has his lights on, correct, and his
4 siren on?

5 A. I'm sorry? I couldn't understand
6 what you said.

7 Q. That video would you agree shows
8 that -- or demonstrates that Officer Harvey
9 had his lights and siren on?

10 A. No.

11 Q. How come?

12 A. I never heard the siren -- I never
13 heard the siren on the video.

14 Q. Do you not hear any siren on the
15 video at all?

16 A. No. I don't recall any. Well,
17 there was -- I think it was Patrolman
18 Harvey's vehicle -- now that I think about
19 it, yeah, there was a siren that -- that was
20 one of the things that Corporal Peterson
21 did, was go back and turn the siren off of
22 Corporal -- or Patrolman Harvey's vehicle.

23 Q. Did you see any lights on Officer
24 Harvey's vehicle?

1 A. I don't recall.

2 Q. Emergency lights operating on
3 Harvey's vehicle?

4 A. Right. I don't recall seeing it.

5 Q. Did you see any emergency lights
6 operating on Officer Peterson's vehicle?

7 A. I don't recall that, no, sir.

8 Q. Do you have an issue with Officer
9 Peterson -- you believe that -- do you have
10 an issue with Officer -- well, never mind.
11 I guess I am going to change that. We will
12 scratch that.

13 It is your understanding that the
14 plaintiff was attempting to remove his
15 backpack when he was driving along the
16 pursuit?

17 A. That's one of the allegations that
18 Corporal Peterson stated.

19 Q. Right. And you accepted that
20 statement as true?

21 A. I accept all statements as true. I
22 do not determine the truthfulness or
23 untruthfulness. I simply report the facts
24 as I am presented with them. Given a

1 separate set of facts, my opinions may be
2 different.

3 Q. In your experience as a police
4 officer, are drugs often carried in
5 backpacks by individuals?

6 MR. DI TRAPANO: I'm just going
7 to object to the form. That's crazy. But
8 it is a form objection.

9 A. I have seen them more often carried
10 in other manners than in backpacks. But I
11 have encountered drugs being carried in
12 backpacks. But not as frequently as I have
13 in people's pants pockets or underwear or
14 socks. I have seen them in more places than
15 a backpack and more frequently than in a
16 backpack.

17 Q. But you agree it is common for
18 people to carry -- or individuals to carry
19 drugs in backpacks?

20 A. It has occurred. I don't --
21 wouldn't say that it is common. But it has
22 occurred.

23 Q. Did you review the materials that
24 the plaintiff had in his backpack?

1 A. I did.

2 Q. And did you see the canisters which
3 were in the backpack?

4 A. I'm not exactly sure what you are
5 talking about. But it has been a while
6 since I reviewed the photographs.

7 Q. When you reviewed the information
8 -- or when you reviewed the things that the
9 plaintiff had in his backpack, did any of
10 those things suggest to you that they were
11 the things in his backpack were the
12 precursors to making methamphetamines?

13 A. No, it did not.

14 Q. So it is your understanding that
15 Officer Peterson struck the back tire of the
16 plaintiff's motorcycle?

17 A. Yes, sir. That's what the
18 plaintiff stated.

19 Q. Is that what you base your opinion
20 on?

21 A. Yes. By undisputed facts.
22 Actually, I believe that the opinion as the
23 version of the police officers -- let me
24 review it real quick.

1 Actually, in paragraph 25, taking
2 Corporal Peterson's statement that the
3 motorcycle struck the railroad tracks. The
4 motorcycle spun as it hits the tracks,
5 ejecting motorcycles off the seat onto the
6 railroad tracks and into a ditch full of
7 water. And the motorcycle came to rest in
8 the same ditch approximately 10 to 12 feet
9 away from the driver. So in disputed facts
10 I believe is where I have the statement from
11 Mr. Means.

12 Q. Do you agree with me then that the
13 -- it is not disputed that Officer Peterson
14 never came in contact with the plaintiff's
15 motorcycle?

16 MR. FORBES: Objection to the
17 form.

18 A. It is disputed.

19 Q. It is disputed?

20 A. Yes.

21 Q. And so what fact did you base your
22 opinion on? You based your opinion on the
23 statement of Peterson that there was no
24 contact, or you based your opinion on the

1 statement of Means that there was contact?

2 A. Again, it is a disputed fact. So I
3 can't determine -- that's up to the court to
4 decide which is true. But given the fact
5 that the officers denied using excessive
6 force when it is plainly caught on video,
7 then their honesty has to be impugned.

8 Q. So you are impugning the honesty of
9 the officers but not the plaintiff in this
10 case?

11 A. No. I am not doing that to either.
12 But I mean you asked what my personal
13 opinion is. If you are caught in one lie,
14 then your honesty is subjected to everything
15 that you said. It can be impugned. So
16 again, my report says that the officer said
17 he hit the tracks and lost control, but it
18 also says in disputed facts in Appendix D
19 that Mr. Means said the officer struck his
20 vehicle. And that would be up to the court
21 to decide which is true.

22 Q. So you agree with me that if you
23 are caught in one lie, then all of your
24 testimony has to be questionable?

1 A. Yes.

2 Q. And you do not question the
3 testimony of the plaintiff?

4 A. I haven't found any disputed facts
5 with his version of the account other than
6 the striking of the vehicle. So again,
7 that's where it diverges. Again, nobody,
8 you know, questioned him about, you know,
9 possessing drugs or anything else. I mean,
10 those are things that were found. But
11 again, this is a police procedure case where
12 the police have used excessive force, and
13 that's what we are in court about. We are
14 not here about him not having a driver's
15 license or insurance and driving with a
16 registration plate that is expired or not
17 assigned to that vehicle. Again, we are
18 talking about the police and their, you
19 know, potential violation of his civil
20 rights by using excessive force.

21 Q. Well, that might be what you want
22 to focus on, I would agree with that. But I
23 would agree that -- but I contend that the
24 case is a lot about a whole lot more than

1 that.

2 A. Well, the criminal case has been
3 dismissed. So now we are in a civil case.

4 Q. That's exactly right. And that's
5 what I believe the case is about, is a lot
6 more than just a police procedure case.

7 A. Okay. Well, that's my only focus.
8 That's what I was brought to be as the
9 expert on those matters.

10 Q. I understand.

11 MR. DI TRAPANO: Are you
12 testifying, Duane, about the case?

13 MR. RUGGIER: Generally
14 speaking, yes. I got a lot more too.

15 Q. All right. Let's see. Roy, do you
16 have any problem with Peterson stopping his
17 SUV on the railroad tracks?

18 A. I think it was poor judgment. He
19 should have gone ahead and pulled all of the
20 way across. Again he, you know, came to an
21 abrupt stop. He almost caused Patrolman
22 Harvey to run into the back of him according
23 to their testimony. So obviously they are
24 not maintaining an assured clear distance.

1 But if I stop my vehicle on the railroad
2 tracks, I would go ahead and pull past the
3 railroad tracks so that I don't endanger an
4 oncoming train. Because he didn't have time
5 at that point to notify the railroad that
6 the tracks may be blocked.

7 So, again, a prudent officer would
8 have moved his vehicle off of the tracks
9 before exiting them.

10 Q. Did Officer Peterson have room to
11 drive through and stop across the tracks?

12 A. Yes.

13 Q. Okay. Do you have a problem with
14 the officers approaching the plaintiff with
15 their pistols drawn after the accident?

16 A. No.

17 Q. When Officer -- let's see. When
18 the plaintiff has his hands in the water and
19 then brings them out and then puts his hands
20 back -- hands back under the water, would
21 that concern you as a police officer?

22 A. No. Because again, common sense
23 dictates. I mean, the police officer is
24 saying this is knee high water, which I

1 don't believe is correct because we can see
2 the motorcycle laying in the ditch and parts
3 of the, you know, left-hand portion of the
4 motorcycle is visible from the water. So it
5 is probably maybe calf deep but not quite
6 knee deep. But I believe that what Mr.
7 Means was doing was simply trying to keep
8 his head out of water. And he complied with
9 the orders. He showed his hands. And then
10 in order to maintain his balance and keep
11 his head out of water, he put his hands back
12 down under the water.

13 So if he was actually trying to
14 draw a weapon or do anything nefarious,
15 other upper movement of his arms and his
16 body would have been prevalent. And then
17 that would have been of concern. But in
18 this situation, the way they described it
19 his hands were simply under the water. And
20 my summation would be that he was simply
21 trying to maintain his balance to keep his
22 head out of the water. And he had even
23 asked them to help get him out of the water
24 because he felt like he was drowning. And

1 he even said he was fluttering his feet and
2 trying to maintain, you know, his airway
3 which is perfectly reasonable. Because
4 nobody wants to drown.

5 Q. Okay. Was it reasonable in your
6 opinion for Officer Harvey and Officer
7 Peterson to be concerned that the plaintiff
8 was reaching for a weapon when he was
9 reaching under the water?

10 A. Yes.

11 Q. Is the plaintiff resisting arrest
12 when he puts his hands under the water?

13 A. No.

14 Q. Would you agree that the plaintiff
15 is resisting arrest when he is not letting
16 the officers grab a hold of his hands when
17 he is under the water?

18 A. Again, that's only their
19 characterization of it. He didn't offer any
20 resistance that I can tell. He never
21 uttered any threats. He never, you know,
22 tried to flee. He was simply trying to keep
23 his airway out of the water.

24 Q. Do you agree with me that the

1 plaintiff would be resisting arrest if he
2 was putting his hands under the water and
3 refusing to allow the police officers to
4 grab his hands?

5 A. There is no evidence to support
6 that, so no. And the fact is that at no
7 point --

8 Q. Wait. Did you read the testimony
9 of the officers?

10 A. I am telling you what my opinion
11 is. And my opinion is that he wasn't
12 resisting arrest. And that I don't recall
13 any testimony that he had been based under
14 arrest. Is there any testimony? I never
15 saw where they said we were informing him he
16 was under arrest.

17 Q. There is testimony that --

18 MR. DI TRAPANO: Asked and
19 answered.

20 (Inaudible.)

21 A. That doesn't mean he is under
22 arrest. They never uttered the words "you
23 are under arrest."

24 Q. But they are clearly attempting to

1 arrest him?

2 A. No. There is nothing clear about
3 it. Just because you grab a hold of
4 somebody doesn't mean they are under arrest.

5 Q. Is it your opinion that over the
6 course of this entire 19-mile pursuit and
7 then the officers attempt to grab onto the
8 plaintiff's hands after the accident that
9 the police officers are not attempting to
10 arrest the plaintiff?

11 A. May be their intent, but they
12 didn't tell him he was under arrest either.

13 Q. Did they have to yell it out before
14 they attempted to arrest him?

15 A. It is always advisable to say, sir,
16 you are under arrest and then try to take
17 physical custody of him.

18 Q. Do you recall -- do you think it
19 would be reasonable for the officer to
20 presume that the plaintiff would know that
21 he was attempting to be arrested after a
22 19-mile pursuit and an attempt to grab onto
23 his wrist after he wrecks?

24 A. What's the problem with telling the

1 person that he is under arrest? Then there
2 is no doubt about it. That is what a
3 prudent law enforcement officer does is
4 inform the person they are under arrest and
5 why they are being arrested. So, sir, you
6 are under arrest for fleeing a police
7 officer. You are under arrest for -- and
8 that's the only thing they could have
9 arrested him for because they wouldn't be
10 able to arrest him for a registration
11 violation.

12 Q. Do you have a problem with the
13 officers using OC spray to gain control of
14 the plaintiff?

15 A. Yes. I think it was excessive
16 especially in this situation.

17 Q. Why was it excessive?

18 A. Because, again, he is simply trying
19 to maintain his airway to keep his head out
20 of the water. And any reasonable person
21 should have been able to determine that.
22 And to pepper spray him -- because it really
23 isn't Mace, they really had pepper spray,
24 but they are calling it Mace. But pepper

1 spray, you know, should only be used when
2 somebody is actively resisting arrest. At
3 the very least -- or I should say at the
4 very most, this would be a passive
5 resistance and that the use of pepper spray
6 at that point was excessive, particularly
7 with somebody that had just been involved in
8 a motor vehicle crash and is in water.

9 Q. Do you consider the plaintiff
10 refusing to pull over when the officers are
11 engaging in the pursuit an example of
12 resisting arrest?

13 A. It is a motor vehicle violation of
14 failing to stop or blue lights and siren
15 which can be elevated obviously to a felony.

16 Q. That wasn't my question. My
17 question though was, do you consider the
18 plaintiff refusing to pull over and
19 attempting to evade the police as an attempt
20 to resist arrest?

21 A. Again, so criminal violation. But,
22 I mean, how does he know they are going to
23 arrest him?

24 Q. Because they've got their lights

1 and siren on and they are attempting to pull
2 him over and he is fleeing and attempting to
3 evade the police officer.

4 MR. DI TRAPANO: Object to the
5 form. There is no evidence that they had
6 their lights and sirens on at any particular
7 time.

8 A. Again, you know, does a person know
9 he is going to be arrested because they have
10 blue lights and siren on. They don't really
11 know that. He is again violating the law.
12 But whether or not he is arrested or not and
13 resisting arrest, they wouldn't know that.

14 Q. When a person -- does the person
15 know that the officers are attempting to
16 arrest him when he is attempted to be pulled
17 over and the officers have on their lights
18 and sirens?

19 A. No. He only knows that they are
20 signalling him to stop. He doesn't know
21 what their intent is. He doesn't know if he
22 is going to be arrested. What if you are
23 talking your wife to the hospital because
24 she is in labor and you don't stop? Do you

1 know that the police are going to arrest you
2 when you get to the hospital?

3 Q. Do you think that --

4 A. You know that they are wanting you
5 to stop, but you decide for whatever reason
6 not to stop. He may ultimately be arrested
7 or he may be given a citation or he may be
8 given a warning. You don't know what is
9 going to be the outcome of the traffic stop.

10 Q. Do you think that the plaintiff was
11 attempting to take his wife to the hospital
12 during this pursuit?

13 A. Well, he didn't have anybody else
14 on the motorcycle. So that would be out of
15 the question.

16 Q. Do you agree that it is a
17 potentially dangerous situation if the
18 officer -- it's a dangerous situation for
19 the officer if the officer is unable to see
20 the plaintiff's hands and they are in the
21 water in this situation?

22 A. It can be. But again, there is two
23 officers. One should have less lethal
24 force. One could have lethal force. And

1 they need to move around behind the person
2 and give them commands. But again, I think
3 by witnessing the subject's upper body
4 movement would give you more indication of
5 what was going on. And again, my
6 interpretation of the facts as they have
7 been relayed is that he was simply trying to
8 balance himself to remain out of the water
9 so he could breathe. And he was asking the
10 officers to help him get out of the water.
11 At no point did he utter any threats or any
12 aggressive nature to cause him to have an
13 unreasonable fear.

14 Q. Do you agree that the plaintiff was
15 asking the officers to remove him from the
16 water?

17 A. Correct.

18 Q. And do you agree that the officers
19 need to remove the plaintiff from the water
20 if he is drowning?

21 A. If he was drowning. But before
22 that, what he is asking, they, as he
23 described it, field goal kicked him back
24 into the water as he was trying to get out

1 of the water. So again, that's an example
2 of an excessive force, that he is trying to
3 get out to save himself. But he was worried
4 about drowning. And an officer kicks him
5 and knocks him back into the water.

6 And again, we are dealing with
7 somebody that had just been ejected from a
8 motorcycle and lands in a ditch. The
9 possibility of cervical spinal injury is
10 very much realistic because you are wearing
11 a motorcycle helmet which makes your
12 25-pound head even more heavy and less
13 likely that your muscles in your neck are
14 going to be able to control it.

15 I mean, just with unrestrained,
16 unhelmeted motorcycle people, that's what
17 they die of is injuries to their head and
18 their cervical spine because they are not
19 able to -- the muscles in the neck are not
20 strong enough to keep your head off of the
21 pavement. And when you have a helmet on,
22 that's just adding that much more weight.

23 So to a reasonable police officer
24 who has had first responder training as all

1 officers do, the prevalence of cervical
2 spinal injury should be evident.

3 Q. Would a reasonable police officer
4 think that the plaintiff was potentially
5 dangerous after in this case the plaintiff
6 attempted to evade the police over the
7 course of 19 miles?

8 A. And it is always a possibility. I
9 mean, officer survival should be prevalent.
10 But again, the use of excessive force is not
11 tolerable.

12 Q. And are you saying the first act of
13 excessive force was the kick?

14 A. I believe so. Then the pepper
15 spray. And then dragging him out by his
16 arms across the tracks and, you know, when
17 the -- I am sure you will get to it. So I
18 won't get ahead of myself.

19 Q. You agree that the plaintiff had to
20 be removed from the water?

21 A. At some point.

22 Q. And then when the plaintiff is
23 carried across the tracks, is that what you
24 have a problem with?

1 MR. DI TRAPANO: Object to the
2 form. There is no evidence anywhere that he
3 was carried across the tracks.

4 A. My observation of the videotape is
5 that he was drug across the tracks by his
6 wrists and by clothing. He was not properly
7 moved as the officers were trained do so in
8 their first responder training. And as
9 particularly with Corporal Peterson being a
10 former emergency medical technician and
11 working for an ambulance, his knowledge of
12 immobilization was much more than Patrolman
13 Harvey who had been trained as a lifeguard
14 about immobilization of possible spinal
15 injuries. In addition to the 40-hour
16 training they should have had at the West
17 Virginia State Police Academy.

18 Q. We have all seen the video numerous
19 times. Describe to me what was improper
20 about what the officers did when they
21 carried the plaintiff across the railroad
22 tracks?

23 MR. DI TRAPANO: Object to the
24 form of the question because it

1 mischaracterizes what the video shows.

2 Nobody was carrying him across the railroad
3 tracks.

4 A. They drug him across the tracks in
5 my opinion. And what they should have done,
6 because he was in a supine position, they
7 should have left him in the supine position.
8 One of the officers should have put both
9 hands underneath his armpits, cradling his
10 head with his helmet in it across his
11 forearms and then moved him length-wise
12 according to which way his spine was --
13 attitude was to keep his neck and spine in
14 line and then moved him up out of that body
15 of water. And it looks like it would have
16 been just as reasonable and probably more
17 prevalent to move him to the left out of the
18 water instead of bringing him over to the
19 tracks. That was their decision to move him
20 over the tracks. They could have moved the
21 other direction, and it would have been just
22 as good and it would have been less rough
23 terrain for them to move him across. But
24 one officer should have supported his neck

1 and head, and the other officer, you know,
2 could have picked him up by the waist or
3 picked him up by the legs and helped moved
4 him -- again, keeping his body in line with
5 his spine, neck and spine. And that's how
6 officers are trained.

7 Q. You don't believe that the officers
8 had to take him across the tracks, you
9 believe they could have taken him in the
10 other direction?

11 A. Absolutely.

12 Q. And I know you just talked about
13 this. Bear with me. I am not an expert in
14 carrying folks. How do you think that the
15 plaintiff should have been handled in this
16 situation? In other words, can you explain
17 to me again how he should have been I guess
18 carried across the tracks?

19 A. Well, moved out of water where he
20 didn't feel like he was going to drown. He
21 doesn't have to go across the tracks or any
22 further than to move him far enough to get
23 him out of the water where he doesn't think
24 he is going to drown. And that should have

1 been it. Whether it was six inches or two
2 feet. But to drag him all of the way across
3 the tracks was irresponsible. Knowing that
4 the likelihood of cervical spinal injury was
5 prevalent, they should have again, you know,
6 cradled his head and neck under one
7 officer's arms, moving him with basically
8 what's called a fireman's drag, is what the
9 proper term is, and then moved him along the
10 long axis of his body out of that area so
11 that he no longer felt like he was in danger
12 of drowning. And then left him there for
13 EMS to come with a backboard and cervical
14 spinal column and properly immobilize him.
15 So there was no necessity to move him as far
16 as they did.

17 Q. Do you believe there was any
18 necessity to move him as far as he did
19 because of the proximity of the railroad
20 tracks?

21 A. Correct. He could have gone the
22 other way, and it would have been shorter if
23 they would have moved -- I will say to the
24 left if the railroad tracks are to the

1 right, they could have moved him a couple of
2 feet to the left, got out of the water and
3 not had to cross the railroad tracks. But
4 they've had to move him twice as far because
5 now they have got to worry about their
6 proximity to the railroad tracks and the
7 possibility of a train coming. So it would
8 have been more prudent to move him to the
9 left side than cross over the tracks to the
10 right.

11 Q. Have you seen photos of where he
12 was located by the tracks?

13 A. Yes.

14 Q. Have you seen the hillside which is
15 right beside him on the tracks?

16 A. Yes.

17 Q. I guess -- are you saying that they
18 should have -- you can't really take him up
19 a hillside then is what I am saying. I am
20 not quite understanding what you want them
21 to do if you don't -- can't take him across
22 the tracks and there is a hillside right
23 there, I don't -- explain to me again what
24 you would like them to do, what they should

1 have done, you believe they should have
2 done?

3 A. Well, they should not have drug him
4 the way they did. That's the first thing.
5 They improperly moved him.

6 Q. Right.

7 A. They should have used the proper
8 techniques as they were taught to do in the
9 police academy. And as Officer Peterson had
10 been trained to do in his emergency medical
11 technician training and that as Officer
12 Harvey had been trained in his lifeguard
13 training, they should have moved him
14 according to those procedures and only moved
15 him enough so that he was no longer in
16 danger of the water or the railroad tracks.
17 And that could have been -- they could have
18 moved him back up onto the surface of the
19 roadway. They could have blocked the road
20 with their vehicles, left him on the asphalt
21 of the road. That was closer. But again,
22 you know, drag him across the rough terrain
23 and across the railroad tracks, that was
24 inappropriate.

1 Q. Do you agree that putting him on
2 the roadway would have been dangerous?

3 A. I'm sorry. Say again.

4 Q. Would you agree that putting him on
5 the roadway would be dangerous?

6 A. No. They would be able to block it
7 with their vehicles.

8 Q. What information or evidence do you
9 believe that there is that the officers knew
10 when they were carrying the plaintiff across
11 the railroad tracks that the plaintiff was
12 paralyzed or that this was dangerous?

13 MR. DI TRAPANO: And I want to
14 continue to object to the form of the
15 question when you mischaracterize the
16 testimony or the reality of the fact that he
17 was carried across the railroad tracks
18 because he was never carried across the
19 tracks. He was drug across the tracks by
20 the wrists.

21 But you can answer the question.

22 You can keep characterizing it like
23 that. I am not going to object again. But
24 I want a continued objection to, you know,

1 the way that you are narrating what
2 happened.

3 MR. RUGGIER: I will be glad to
4 repeat you a continuing objection to it.

5 A. Can you repeat your question,
6 please.

7 Q. I'm not sure I can. Maybe the
8 court reporter can. That might be better.

9 (The preceding question was read
10 back by the court reporter.)

11 A. At that point, they wouldn't have
12 known he was paralyzed, but they would have
13 known that it was an improper movement
14 through the training they received both in
15 the police academy, through the emergency
16 medical technician course and through the
17 lifeguard training they both received.
18 Because knowing that somebody has been
19 ejected from a motorcycle, traveled several
20 feet off the roadway, impacted, you know,
21 the ground and in water environment, they
22 should have known that the likelihood of
23 cervical spinal injury just like with any
24 motorcycle crash, officers are taught that

1 the likelihood of cervical spinal injury is
2 there and they should not move the vehicle
3 -- the victims unless it was absolutely
4 necessary for the preservation of life.
5 Otherwise, they need to be immobilized as
6 they are found.

7 Q. Do you agree with me that at the
8 time the plaintiffs were carrying the -- I'm
9 sorry. Scratch that.

10 Let's see. So your issue is how
11 they carried the plaintiff across the
12 railroad tracks?

13 A. How they drug him -- yeah. I have
14 a problem with how they drug him across the
15 railroad tracks. That's the first problem.
16 But we will get to the other problems as we
17 move along.

18 Q. I hope so.

19 Do you agree with me that the
20 police officers would not have known that
21 the plaintiff was paralyzed at the time when
22 they carried him across the tracks?

23 A. My belief is he was not paralyzed
24 until after Patrolman Harvey stomped him on

1 the head and rolled him over onto his
2 stomach and handcuffed him while Corporal
3 Peterson was away calling for EMS. At that
4 point is when Mr. Means told Corporal
5 Peterson when he returned that he could no
6 longer feel his legs.

7 But before that, he felt like he
8 could stand up and didn't have any issues
9 with his lower extremities. But then after
10 Harvey stomped him on the head, rolled him
11 over, handcuffed him, again, in
12 contradiction to the training that they
13 received about potential cervical spinal
14 injuries and motor vehicle crashes that he
15 conducted this. And at that point, he
16 notified Corporal Peterson that he could no
17 longer feel his legs. So it is that point
18 again based on testimony that I believe that
19 the immobilization or the paralysis
20 occurred. But again, you know, that's up to
21 the doctors and people -- but as a police
22 procedure expert in knowing that they are
23 not supposed to move injured people that
24 way, that is a likely cause.

1 Q. What is your understanding of the
2 cause of the paralysis?

3 A. I believe that his spinal cord was
4 injured during the crash and that it was
5 exacerbated by the -- Officer Harvey turning
6 him over to handcuff him. So he moved him
7 from a supine position to a prone position.
8 He didn't place his hands behind his back.
9 And all that time, that is going to cause
10 his head to move back and forth and twist.
11 And I believe that's what exacerbated the
12 spinal cord injury.

13 Q. Was the -- what was the specific
14 act of the police officers that is your
15 understanding that caused the plaintiff to
16 be paralyzed?

17 A. Like I said, two potentials would
18 be one stomping on his head which would be
19 excessive force and unreasonable. And then
20 turning him over from a supine position to a
21 prone position to facilitate handcuffing him
22 behind his back. Again, that would have
23 caused unnecessary movement of the cervical
24 spine.

1 Q. And we both agree that you don't
2 have any real medical background to
3 determine what --

4 A. I have 30 years as an emergency
5 medical technician and over 15 years as an
6 instructor. But of course without having
7 the advantage of medical equipment, I
8 wouldn't be able to tell. But again, you're
9 asking my opinion about what was the
10 mechanism of injury. And I have given you
11 that opinion. That a motor vehicle crash is
12 well documented to cause cervical spinal
13 injuries. And that a motorcycle crash
14 involving the ejection of a driver and
15 landing in a ditch, then being drug across
16 railroad tracks, stomped on the head and
17 flipped over would all be things that would
18 exacerbate the mechanism of injury.

19 Q. And to be clear, it is your
20 understanding that there was two acts which
21 may have caused paralysis, and that would be
22 flipping him over and stomping on the
23 helmet?

24 A. And I would say -- I wouldn't

1 negate the fact of being drug across the
2 railroad tracks inappropriately. We moved
3 in that manner. It could have also caused
4 injury. But Mr. Means stated he did not
5 feel that he had lost the use of his legs
6 until after Patrolman Harvey had stomped on
7 his head and flipped him over and handcuffed
8 him. And at that point, he notified
9 Corporal Patterson when he returned that he
10 couldn't feel his legs anymore. So those
11 were the two incidents that occurred just
12 prior to that.

13 MR. DI TRAPANO: Did you say
14 that was Peterson's testimony? I got lost
15 for a second.

16 MR. RUGGIER: I don't know.

17 Q. Have you spoken to any medical
18 doctors who told you what the cause of the
19 paralysis was in this case?

20 A. No. No. I have not talked to
21 anybody.

22 Q. And do you agree with me that the
23 first time any officer heard that the
24 plaintiff could not feel his legs was when

1 the plaintiff told Officer Peterson after he
2 was handcuffed that he could not feel his
3 legs?

4 A. That's my recollection, yes.

5 Q. Okay. Is there a standard by which
6 officers are supposed to pick up individuals
7 after they are arrested if they are on the
8 ground?

9 A. It is all going to be
10 circumstantial. In this situation, based on
11 the mechanism of injury, the potential for
12 injury, yes, they are taught not to move
13 them the way they did.

14 Q. Well, but if they don't know that
15 he is paralyzed or hurt, why are the
16 officers supposed to treat him like he is
17 paralyzed or hurt?

18 A. Because they are aware of the
19 mechanism of injury. They saw him wreck his
20 motorcycle and fall into a ditch. And
21 again, in the 40-hour first responder
22 training, all of the officers -- and this
23 training is required by Department of
24 Transportation for any state that gets

1 federal funds. Though it is part of their
2 mandated curriculum in the training academy.
3 And to assume that anybody that has been in
4 a motor vehicle crash is going to suffer
5 from cervical spinal injuries because they
6 are not able to control their head. And
7 especially if there is any visible injury.

8 But in this case, he is wearing a
9 helmet. There is no visible head injuries.
10 But the likelihood of him suffering those
11 type of injuries is prevalent. And those
12 officers and any reasonable officer would
13 know not to move him in a manner they did.

14 Q. Do you agree though that he had to
15 be moved? You just disagree with how he was
16 moved?

17 A. I think he should have been moved
18 out of the water. But where he was moved
19 to, how he was moved were both
20 inappropriate. There is nothing that would
21 have stopped them from simply basically
22 putting him in the fireman drag position and
23 leaving him in the water until EMS comes.
24 They could have stood there in the water

1 supporting his head and neck so he didn't
2 feel like he was going to drawn. And that
3 would have probably been the safest thing to
4 do.

5 Q. Do you agree with me that moving
6 the plaintiff after the accident was not the
7 use of force?

8 A. It wasn't intended to be a use of
9 force. It was just an inappropriate way to
10 do it. And the manner in which they did was
11 inappropriate.

12 Q. The stomp on the helmet is pretty
13 clearly excessive force if that's what
14 occurred, do you agree?

15 A. I do.

16 Q. And if he did not stomp on the
17 helmet, then it is not an excessive use of
18 force, do you agree?

19 A. If it didn't occur. But there is
20 video that has been enhanced and is very
21 prevalent that it was occurring without
22 justification of any sort.

23 Q. Do you disagree with Officer
24 Harvey's testimony in regard to what he said

1 actually occurred when he attempted to step
2 over top of the plaintiff's helmet?

3 A. Again, that will be up to the jury
4 and the judge to determine if he is telling
5 the truth or not. But again, they are going
6 to watch the video and make up their own
7 mind.

8 Q. When you watched that video, do you
9 believe that you see Officer Harvey step or
10 stomp onto the helmet of the plaintiff?

11 A. My opinion is from based on both
12 the raw video and the enhanced video is that
13 it was an intentional use of force by
14 stomping on the head, which there is no
15 justification. No officer is ever taught to
16 stomp on anybody's head for any reason. So
17 there is just no plausible excuse for doing
18 so.

19 Q. Have you spoken to any of
20 plaintiff's other experts in regard to --
21 any of the other plaintiff's experts at all
22 actually?

23 A. No.

24 Q. When you viewed that video, how

1 close do you believe that Nunley and
2 Chandler are? That's the name of the two
3 girls in the car.

4 A. Twenty-five to 30 feet.

5 Q. Okay. Do you agree with me that
6 you can't really see where Officer Harvey's
7 foot lands when he attempts to step over top
8 of the plaintiff's helmet?

9 MR. DI TRAPANO: Object to the
10 form.

11 A. I could see that the head moves
12 when he stomps on it. So you cannot exactly
13 see where his foot contacted his head. But
14 you can tell by his body movement and
15 Harvey's actions that he stomped on his
16 head.

17 Q. Do you agree with me that the
18 plaintiff was wearing a helmet?

19 A. I agree.

20 Q. And do you agree with me that it
21 would be inaccurate to say that Officer
22 Harvey stomped on the plaintiff's head
23 because in fact the plaintiff was wearing a
24 helmet?

1 A. I'm sorry.

2 MR. DI TRAPANO: I'm going to
3 object to the form because that's a
4 distinction without a difference.

5 But you can answer the question.

6 A. Can you rephrase that?

7 Q. Maybe the court reporter can repeat
8 the question.

9 (The preceding question was read
10 back by the court reporter.)

11 A. So you are asking he stomped him on
12 the head but he was wearing a helmet, is
13 that what you are getting at?

14 Q. Yeah. I am saying, is it your
15 testimony that the stomp on the head is
16 false and inaccurate because he was wearing
17 a helmet?

18 A. No. His head was in the helmet and
19 that it was excessive force. And if I was
20 the chief of police, he would have been
21 terminated that day. When that video was
22 brought to my attention, he would have been
23 terminated and possibly criminally charged.

24 Q. Do you agree with me that Officer

1 Harvey's foot -- even if what occurred as
2 you stated it occurred, that Officer
3 Harvey's foot never actually came into
4 contact with the plaintiff's head?

5 MR. DI TRAPANO: Object to the
6 form.

7 A. It came into contact with -- it
8 came in contact with the helmet that he was
9 wearing on his head. So it would have still
10 transferred energy into his head. It still
11 would have done damage to his neck and
12 spine. And it was unreasonable and
13 excessive and criminal in nature.

14 Q. Fair enough.

15 And you are aware that Officer
16 Harvey was never prosecuted for this?

17 A. No. But hopefully the U.S.
18 attorney will take a re-look at it.

19 Q. Are you aware that they looked at
20 it once and decided not to prosecute?

21 A. They decided not to property. But
22 that doesn't mean it didn't exist.

23 Q. It doesn't mean it doesn't exist?

24 A. And the videotape wasn't in place

1 at that point. Or the enhanced video and
2 some more testimony. So there is actually
3 more evidence today to re-look at it.

4 Q. Yeah. It would seemingly indicate
5 though that the fact that they didn't
6 prosecute -- because this would be a
7 prosecutable offense if Officer Harvey
8 actually stomped on the plaintiff's head --

9 A. I agree.

10 Q. -- I would agree with that.

11 A. Yeah.

12 Q. And we have talked about the
13 alleged stomp on the head or on the helmet a
14 lot in this case, but I would ask you, did
15 you look and see where Officer Harvey --
16 where were Officer Harvey's hands at the
17 time of the alleged stomp?

18 A. I don't recall.

19 Q. Do you remember that he was
20 actually handcuffing the plaintiff, so he
21 was kind of bent over the plaintiff? Does
22 that make any sense to you?

23 A. No. My recollection was he did the
24 head stomp, and then he moved into a

1 handcuffing position.

2 Q. Do you recall that Officer Harvey
3 was actually leaned over the plaintiff when
4 the alleged stomp occurred?

5 A. No. That's not my recollection.

6 Q. Would you agree with me that if you
7 are going to stomp on someone's helmet who
8 is laying there, the best position to do so
9 would not be bent over reaching for their
10 handcuffs on their -- I guess their back,
11 lower back?

12 A. Well, any reason to do it or doing
13 so would be inappropriate. So it doesn't
14 matter what attitude is. I mean, I am sure
15 there would be he could have jumped up and
16 down and done a better job. But instead, he
17 stomped on his head.

18 Q. Do you agree with me that a normal
19 way to stomp on somebody's head would be to
20 stand up and do it?

21 A. Again, everybody has got different
22 tactics and their point of balance is
23 different. So the fact is he did it, and it
24 was inappropriate.

1 Q. Well, you are stating that as a
2 fact, but that's actually a disputed fact.

3 A. Right. I have got a video that --
4 you know, again, it could be disputed. But
5 we will let the jury decide.

6 Q. Yeah. Do you agree with me that
7 Officer Harvey disputes that?

8 A. I'm sorry. What?

9 Q. Do you agree with me that Officer
10 -- that Officer Harvey disputes it?

11 A. Yes.

12 Q. Okay. Have you ever been sued?

13 A. I have been named in a suit as a
14 law enforcement officer, yes.

15 Q. How often? How many times?

16 A. Twice.

17 Q. And when?

18 A. One was as a Wake County Deputy
19 Sheriff probably 1993. And then one was as
20 the chief of police for Bladenboro Police
21 Department. You know, just named in the
22 action.

23 But the first action in 1993 was
24 dismissed. I filed a counterclaim of

1 assault. And plaintiffs dismissed. And
2 then in the case in Bladenboro, I was found
3 not to have -- that I committed -- that I
4 had adequate policies and supervision in
5 place, and I was actually dismissed from the
6 lawsuit.

7 Q. Case number one, was there a
8 settlement of any kind?

9 A. No. None.

10 Q. Case number -- were you voluntarily
11 dismissed by the plaintiff, is that what you
12 were found?

13 A. For number one or two?

14 Q. One.

15 A. Number one, they dismissed their
16 case. When I counter-sued them for
17 assault, they dismissed the case and I
18 dismissed my action.

19 Q. What was the name of the plaintiff?

20 A. Honestly, I don't remember. It has
21 been 20 years ago.

22 Q. Case number two, what was the final
23 -- what was the result of that case?

24 A. I was removed from the lawsuit.

1 And the town ended up paying a settlement of
2 \$80,000.

3 Q. Okay. So you were dismissed from
4 the suit, but the city or town paid 80,000
5 bucks?

6 A. Yes.

7 Q. What was -- do you remember the
8 name of the case?

9 A. No, sir.

10 Q. What was the allegation against
11 you?

12 A. That I failed to properly supervise
13 and manage the officers.

14 Q. And what was the allegation against
15 the officers?

16 A. Excessive use of force.

17 Q. Okay. What were the names of the
18 officers?

19 A. I believe it was Officer Beret
20 (phonetic) was a full-time officer. And I
21 don't remember the reserve officer's name.
22 He was an American-Indian. I don't
23 remember. He had a very common American-
24 Indian name, but I don't recall it off the

1 top of my head.

2 Q. And this was at -- I'm sorry. This
3 was at the Wake County Sheriff's Department?

4 A. No. That was Bladenboro Police
5 Department in Bladenboro -- in Bladen, North
6 Carolina.

7 Q. Were you chief of police?

8 A. Yes.

9 Q. Okay. Let's see. How did you
10 prepare for this deposition?

11 A. I reviewed, y report.

12 Q. Anything else?

13 A. I spoke with Plaintiff's counsel
14 before the deposition began this morning.

15 Q. Okay. And which lawyer?

16 A. I believe both.

17 Q. Okay. And what did they tell you?

18 A. Just a little bit about you and how
19 your questioning had been. So what to
20 anticipate.

21 Q. Well, I definitely don't want to
22 know what they said about me.

23 A. It was very complimentary.

24 Q. Excellent.

1 Did they provide you with any
2 information or anything of that like nature?

3 A. No. They were going to send me a
4 deposition from the highway patrolman. But
5 I didn't receive it by the time we started.
6 It was something I hadn't been previously
7 provided with.

8 MR. RUGGIER: All right. Bear
9 with me. I don't think I have any further
10 questions.

11 THE WITNESS: How did you want
12 to handle payment for the deposition?

13 MR. RUGGIER: I don't know.
14 Let's see if they have any other questions.
15 Do you guys have any questions, Dante?

16 MR. DI TRAPANO: I just want to
17 ask you a couple of questions, Mr. Taylor.
18 And I will arrange with Duane's office to
19 make sure that you get paid. Other than the
20 nice things that I said about him and his
21 approach to depositions, I also would say
22 that he pays to the witnesses. So, you
23 know, you don't have anything to worry
24 about.

1 THE WITNESS: I am sure I don't.

2 MR. RUGGIER: We will pay it.

3 EXAMINATION

4 BY MR. DI TRAPANO:

5 Q. The only questions that I have --
6 the first question is, you have given a lot
7 of opinions here today and gave a lot of
8 opinions in your report. And I just wanted
9 to get on the record that all of those
10 opinions were to a reasonable degree of
11 probability within your profession; is that
12 correct?

13 A. Yes, sir, they are. Based on my
14 training, experience and education.

15 Q. Okay. And then the other question
16 that I had was that it is important for
17 police officers to tell the truth at all
18 times; isn't that correct?

19 A. Yes, sir. It is imperative for our
20 justice system to work properly.

21 Q. And it is even -- there is even a
22 heightened, you know, importance of that
23 when somebody is sworn under oath in a
24 deposition; isn't that correct?

1 A. Absolutely.

2 Q. Okay. And then if somebody was
3 actually sworn in at a federal trial sitting
4 before a federal judge and they have sworn
5 to tell the truth, it would be important for
6 that officer to tell the truth so help him
7 God, wouldn't that be true?

8 A. Absolutely. For every witness.

9 Q. And if they didn't tell the truth,
10 that would be perjury, wouldn't it?

11 A. Yes, sir, it would.

12 Q. And if an officer committed perjury
13 in the face of overwhelming video evidence
14 and eyewitness testimony, that would be a
15 crime that would potentially be prosecuted,
16 correct?

17 A. In my opinion, yes, sir.

18 MR. DI TRAPANO: Those are all
19 of the questions that I have is.

20 THE WITNESS: Thank you, sir.

21 MR. RUGGIER: I just have a
22 couple more.

23 RE-EXAMINATION

24 BY MR. RUGGIER:

1 Q. It is very important for the
2 plaintiff who is suing the police officers
3 to tell the truth and testify truthfully; do
4 you agree with that?

5 A. Absolutely.

6 Q. And do you agree that it is very
7 important for the plaintiff to tell the
8 truth because if the plaintiff is not
9 telling the truth, they are committing
10 perjury?

11 A. Yes, sir.

12 Q. And you would agree with me that
13 perjury is a crime and to perjure yourself
14 in front of a federal court in an attempt to
15 get money is a criminal act that is
16 extremely offensive and prosecutable?

17 A. In my opinion, yes, sir.

18 MR. RUGGIER: I don't have any
19 further questions.

20 THE WITNESS: Thank you, sir.

21 MR. DI TRAPANO: He will -- do
22 you want to read the deposition and --

23 THE WITNESS: I will waive and
24 sign -- or waive signature.

1 MR. RUGGIER: So as far as
2 getting you paid, we owe you \$1500 for the
3 deposition; is that clear?

4 THE WITNESS: Yes, sir.

5 MR. RUGGIER: Can you send me
6 your -- can you e-mail me your -- through
7 Dante or however you want to do it, but
8 e-mail us your -- we will need whatever it
9 is -- you know, who we make the check out to
10 and your -- usually we need your --

11 THE WITNESS: W-9.

12 MR. RUGGIER: -- yeah, W-9.

13 THE WITNESS: Yes, sir. I will
14 be glad to -- I will forward it to the
15 plaintiff's attorneys, and they can move it
16 over to you if that's fine.

17 MR. RUGGIER: Sounds good. That
18 will work. Thank you, sir.

19 THE WITNESS: Yes, sir. Nice
20 meeting you all.

21 (Deposition concluded at 1:15
22 p.m.)

23 * * * * *

24

1 CERTIFICATE

2
3 I, Tara Arthur, Certified Stenotype
4 Reporter and Notary Public, do hereby
5 certify that the foregoing deposition of the
6 above-named witness, was duly taken by me in
7 machine shorthand, and that the same were
8 accurately written out in full and reduced
9 to computer transcription.

10 I further certify that I am neither
11 attorney or counsel for, nor related to or
12 employed by any of the parties to the action
13 in which this deposition is taken; and
14 furthermore, that I am not a relative or
15 employee of any attorney or counsel employed
16 by the parties hereto or financially
17 interested in the action.

18 My commission expires April 16, 2022.

19 
20 _____
21 Tara Arthur
22 Certified Court Reporter/Notary Public
23
24

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